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# THE CENTRAL PACIFIC RAILROAD.

## ITS RELATIONS WITH THE GOVERNMENT.

## T HAS PERFORMED ALL ITS OBLIGATIONS.

ARGUMENT OF

**CREED HAYMOND,**

—ITS—

GENERAL SOLICITOR,

MADE TO A

Select Committee of the U. S. Senate,

—:) CONSISTING OF (:—

nator Frye, *Chairman*, and Senators Dawes, Hiscock, Davis,
Morgan, Butler, and Hearst,

*March 17th and 26th, and April 7th, 1888.*

REPORTED BY
JAMES L. ANDEM,
Stenographer of the Committee.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

# PACIFIC RAILROADS.

## ARGUMENT OF CREED HAYMOND

BEFORE

*Senate Committee March 17th, 1888.*

### THE CENTRAL PACIFIC RAILROAD COMPANY HAS PERFORMED EVERY OBLIGATION.

Mr. HAYMOND said:

*Mr. Chairman and Gentlemen of the Committee:* I appear as general counsel for the Central Pacific Railroad Company, not to address the committee for or against any specific measures, nor at this moment to suggest any settlement based solely upon a moneyed consideration.

Two honorable men may, after having made a contract with each other, differ as to its construction, and they may with propriety sit down together and discuss matters and attempt to reconcile their differences. If they cannot reach an amicable adjustment they may refer the matter to arbitration or to the courts. If, in addition to differences of opinion, one should charge the other with having violated the rules which are recognized by civilized man as governing the relations between honest people, then so long as these charges were insisted upon, settlement made upon a moneyed basis between the two would be dishonorable to both.

For years charges have been loosely made against the directory of the Central Pacific Railroad Company—charges involving the honor of the men comprising that directory.

The majority report of the United States Pacific Railroad Commission, which the Senate has referred to you for consideration, and which you now have before you, when closely analyzed, vindicates in the main the integrity of the directors. It shows that the Central Pacific Railroad Company has faithfully kept all of its obligations, public and private; that toward the United States it has discharged in the letter and to the spirit every duty imposed upon it by the Government, while, on the other hand, the Government has violated many of the obligations on its part to be performed. But the Commissioners seem to have been surprised that these things were so, and running through the majority report there is a vein of apology for having to state these truths, and to the casual reader of that report it does not constitute the vindication which, perhaps, the Commission intended it should.

### THE MINORITY REPORT.

The minority report of the Commission, with a few exceptions, is made up of glittering generalities, and places upon the record the slanders which have for twenty years been repeated by irresponsible parties. Until every impression which these charges may have made upon your minds has been removed the directors could not, with credit to themselves, nor could you, consider any terms of adjustment.

The men who projected and carried into execution a work which Senator Bogy, of Missouri, from his place in the Senate, characterized as "the greatest achievement of the human race on earth," have no propositions to make looking to a purely moneyed settlement of the question, and would accept no bill, however generous in its terms. Their ultimatum, here and now and for all time, is complete vindication.

But three of the original projectors of this great work are living. They are old men who have nearly reached the allotted limit of three-score years and ten. The other projectors rest in honored graves. If their survivors should consent to any adjustment of the present dispute which would leave a stain upon the memory of the dead or tarnish in the slightest degree the honor of the living, they would neither have nor deserve the respect of mankind.

I have listened attentively to the proceedings of this Committee since its first organization. I have heard the able argument made by Mr. Anderson, one of the Pacific Railway Commission, in favor of the bills which the Commission present. He has argued from the stand-point of an avaricious creditor, who worms himself into all the affairs of his debtor, and, without regard to favors received in the past or justice to be done in the future, cruelly calculates how much of the blood of the debtor he may safely take in addition to the pound of flesh which the contract and the law give him.

Mr. Adams, the president of the Union Pacific Railway Company, the bearer of an illustrious name, in whose veins flows the blood of two Presidents of the United States, has never said before this Committee, or elsewhere that I can find, that the bill which the Commission proposes is either just or right. On the contrary, he says that the United States, in dealing with its creditor, has forgotten how much that creditor has given to it, and seeks to impose terms which no foreign banker nor any private individual could rightly ask or accept.

### ADAMS' CONCLUSION.

It is true, he says, that he will accept the bill if passed and will endeavor to get the Union Pacific Railway Company, which he represents, to agree to its terms; but the reasons which he places upon the record for his willingness to accept the bill are reasons not creditable, to say the least, to the United States.

He avers that from the hour when he entered upon the discharge of the duties of president of the Union Pacific Railway Company he has been surrounded by railroad wreckers, and has been harassed by attempted governmental legislation, which, if carried out, would destroy the property intrusted to his charge. He declares that the lobbies of this Capitol and the corridors of the Departments swarm with the emissaries of the Wall-street wreckers. I read from his written argument before you to be found on page 31 of your printed proceedings. He says:

### ADAMS ON THE RAILROAD WRECKERS.

"The Wall-street wrecker, too, has a keen scent. Among men he is very much what a wolf is among beasts of prey, or the fin-back, shovel-nose shark is among fishes—the common enemy of mankind. Whenever a large corporation is in difficulties, even before those managing its affairs realize the fact, the wrecker is on hand. It was my fortune to take charge of the affairs of the Union Pacific Railway Company at a time of great financial trouble. The failure of Grant & Ward had taken place. The company was in debt; its relations with the Government were disturbed. From that day to this there has been no time when I was not conscious of the close proximity of the wrecker, just as the traveler in the woods might hear the distant cry of wolves; just as a mariner in the tropics sees the fins of sharks rippling the water as they move toward his vessel or prowl about it.

"The emissaries of the wrecker lurk about the corridors of the Departments here in Washington and meet you in the lobby and committee-rooms of the Capitol. They are always writing letters to Cabinet officers. They induce unwary members of Congress to offer resolutions of inquiry or to submit for reference measures calculated to do us injury. They send communications over all kinds of signatures to newspapers. Thus they manipulate the Wall-street market, and through fluctuations in values, eke out a precarious living for themselves and broken-down hangers-on. Blackmailers, not unseldom discredited clerks or unprosecuted defaulters, they have always at their tongues' end the nauseous cant of reform. None are so honest, so thoughtful of the dear public, so anxious that the Government should get its due, as they—they who never yet in their lives consciously uttered a true word or did an honest day's work. Such are the men and their emissaries who have long been greedily eyeing the Union Pacific. There are good pickings in it still.

"In their moments of confidence and among themselves they openly and longingly express an abiding faith that if they could once break down the present stockholders' management they would have things their own way. A Government receivership is their dream. Just now I chance to stand between them and their prey. Cannot Congress, or the Government, the Committee on Pacific Railways, or the Secretary of the Interior, be so worked upon that one or the other will drive me out? Then, at least, the wrecker would have his day so long waited for. And so, month after month, and session after session, they would howl about these entries, and lobbies, and corridors, and committee-rooms, observant, hopeful, hungry, carefully snapping up, meanwhile, each unconsidered trifle."

These are the official utterances of the president of the Union Pacific Railway Company made in your presence.

### VALUE OF THE PROPERTY DEPRECIATED.

I turn now for a moment to the report of the directors of the Union Pacific Railway Company, which has been laid upon your table and is made part of the record of your proceedings, and I find there an assertion that bills have constantly been introduced in Congress and proceedings had which affected the value of the property under their charge and impaired the credit of the company.

The directors, a part of them Government officials, make the charge that before these bills had been introduced in Congress and these proceedings had the railway wrecker of Wall street had due and timely notice.

### WILLING TO ACCEPT ANY TERMS.

Mr. Adams further says that until he came to the presidency of the company he had not been accustomed to be called a liar. He says virtually that he is tired and sick of this business, and is willing to accept any terms which will relieve him from things so unpleasant to an honorable man; or, to give to his language its true import and meaning, he has grown tired and weary of the conflict with the men who would wreck this property and destroy not only the interest of the stockholders, but of the Government of the United States in it, and is willing to buy peace at any price he can pay.

I wish it clearly understood that I am not making these charges, for I know nothing of the devious ways of the men whom Mr. Adams characterizes as blackmailers and liars.

### A MAGNIFICENT PROPERTY.

I wish it clearly understood that I do not attempt to judge Mr. Adams or to criticise his action. But, standing here in this presence, I will not permit the occasion to pass without saying that if I were now the owner of the Union Pacific railway, of that magnificent property which passes through one of the most fertile portions of these United States—a property which is destined by reason of the resources of the rich and fertile country through which it runs to be in the future to the United States what the Great Central railroad of New York is to that State—before I would accept a bill the very terms of which stain forever the memory of that sturdy son of New England who gave his fortune and his life to create that property, and who, when the United States was weak, when its existence as a nation hung in the balance, with patriotic faith in the final result and in its magnificent future, bore its credit upon his shield, I would see that property perish from the face of the earth.

I am not here to defend the character of Oakes Ames—he needs no defense at my hands. When the name and existence of his slanderers have long been forgotton, the memory of his acts, of devotion and fidelity will remain part of the rich inheritance of those who will occupy in peaceful pursuits the lands which he reclaimed from the savage and the wilder ness and gave over to civilization, to become the home of a happy and prosperous people.

It would be hard to convince the noble pioneers of my own State that Oakes Ames, now unable to defend himself, deserved at the hands of the United States the disgrace which this bill will bring to his memory. In the early days of California, I well remember that his name stamped on a shovel or pick was all the assurance that a hardy miner of that State wanted as to the excellence and worth of the implement.

But, if Mr. Adams is tired and driven by circumstances which it seems impossible for him to control to accept such a measure, I want to put it upon the record now that Leland Stanford, Charles Crocker, and C. P. Huntington, the survivors of the projectors of the Central Pacific Railroad Company, are neither tired nor disheartened. Age has come upon them, it is true; their steps are not as firm nor their eyes as bright as when for three winters they struggled on the summits of the Sierras and triumphed over nature itself; but while they may not be as young as they were then, yet "age has not cooled the blood of our Douglass," and before they will submit to any measure which shall involve the honor and integrity of the dead or of the living they will resist with all the power which right gives, and if they perish in the fight the glory and honor of their achievements will be theirs and their children's for all time to come, while the shame and humiliation will be that of the Government they so faithfully served.

## AN EXPLANATION.

And here, so that I may not be misunderstood, when I speak of the Government of the United States I do not speak of it in its broad sense; I do not mean the people of the United States, but I want to be understood that I use that term as referring only to those who administer the Government.

I have faith and confidence in the people of this country. I know that while hasty and impulsive they may be wrong, but in the end their judgment is as unerring as the judgment of God. We will stand for the right; we will not swerve from the line. Whatever may be the consequences to ourselves from the judgment of the Government of the United States, if it should be against us, we will appeal to the people, and in the appellate court so constituted we will retry the issues.

I am here to assert several propositions, many of which will be startling to you, for I cannot close my eyes to the fact that, whether you may be conscious of it or not, it is not in the nature of things that the slanders of twenty years should not have made some impression upon your minds.

## THE PURPOSE IN HAND.

I am here to assert and to prove by the record which the Pacific Railway Commissioners have placed before you—

*First.* That if this Government shall ever descend from its high position and place itself on this matter in the attitude of private creditor, forgetting all obligations and regardless of all equities, claiming the full amount of the bonds advanced this company, with 180 per cent. usury, it stands in no danger of losing a single cent of the principal or interest, unless by its own acts.

*Second.* That the directors of the Central Pacific Railroad

Company have faithfully performed, at the time and place mentioned in the law, every obligation they ever undertook to perform towards the United States, and that, on the other hand, the Government of the United States has not performed one single obligation which it undertook, but has from the year 1864 down to the present time, with a reckless disregard of the rights of this company, which would have disgraced a private contractor, failed and refused to perform in the manner in which it covenanted to do any of its obligations.

*Third.* That the directors of the company have never done one single act which they would not repeat under the same circumstances; that they can account, and are now ready and willing to account, and challenge the United States to meet them before any judicial tribunal now organized, or which may hereafter be organized, for all of their actions, not only under the laws which govern the relations between trustee and trustor, but they are willing to waive every statute of limitation and take that account under the stricter law which governs the relations between guardian and ward. They are willing to meet the Government of the United States and to answer, not only that they have administered the estate fairly and to the interests of the ward, but they have gone further and have protected the property to the extent of their power against the improvidence of the Government.

### NO DANGER OF LOSS.

And before entering at length upon the proofs which will support and establish these propositions beyond all cavil I desire in the beginning to show that so far as the Central Pacific road is concerned the Government cannot lose a dollar of the full amount claimed, except it loses it by reason of its own folly; and this result, so creditable to the directors, has not been attained by reason of the strength of the aided line or by reason of any act of the Government of the United States, but by the use of foresight and judgment and in many instances against the action of the Government. I want to show how idle all these charges are. What I say in this connection is for that purpose alone. I do not suggest the following as a basis of settlement. I use it as I might use one of the many illustrations which come to me—merely to show how plain is the problem which you are to solve.

Colonel Morgan, the engineer selected by the Pacific Railway Commission, one of the most skillful engineers in the United States, one of the best railroad constructors in the United States, a man whose life has been spent in such work, a man whose character is above reproach, and whose word upon these subjects is a law in itself, reports to the Commission that the property of the Central Pacific Railroad Company, including its aided and non-aided lines, including its terminals and workshops, is to-day of the actual cash value of one hundred and ten million dollars ($110,000,000.)

## ASSETS AND LIABILITIES.

If no legislation whatever is had the debtor and creditor account of the Central Pacific Railroad Company will, in November, 1898, when these bonds become due, stand as follows:

Debt (secured by mortgages) to private creditors, exclusive of the debt secured by the land mortgaged (which takes care of itself), $52,127,000.

Principal of Government claim, $27,855,680.

Thirty years' interest upon the Government claim (180 per cent.), $50,140,224.

Making a sum total of indebtedness at that date of $130,122,904.

Cash assets available at that date, private sinking fund of the company, $22,000,000.

Credit to the company in the Treasury of the United States on the bond and interest account up to November 1, 1888, $6,203,379.

Sinking fund held by the United States up to November 1, 1888, $3,418,996.

Estimated payment from 1888 to 1898 under the Thurman act, on the basis of the payments for the years 1883–1886, $4,780,000.

Making the total (without computing any interest whatever upon the money paid into the Treasury of the United States, and after computing full interest upon all claims by the United States) cash assets available on the first day of November, 1898, $36,402,375, leaving less than $94,000,000 to be paid on the first day of November, 1898, out of a property now valued at $110,000,000.

## IF CERTAIN THINGS ARE DONE.

If we should pay to the Government of the United States the $22,000,000 in our sinking fund the Government then would have on hand, without counting any interest in the meantime, over $36,000,000, which sum if then applied on the debt secured by first mortgages, would leave less than $16,000,000 of indebtedness, exclusive of that of the United States. The indebtedness to the United States would be $78,000,000, the principal portion of which (over $50,000,000) would be interest.

Now, mark how simple the process and how easily the Central Pacific Railroad Company, if the Government is disposed to act with it, could handle this indebtedness, if indebtedness there should be. Call the indebtedness in a round sum $100,000,000 for convenience. The Government could issue its bonds for that amount, which would be readily taken if they bore an interest of 2 per cent. per annum. That would make a charge upon the Treasury of the United States of $2,000,000 per annum. The company could, without any difficulty and without assuming a burden nearly as great as is now upon it for interest, pay into the United States Treasury $4,000,000 annually, which would pay off the last dollar of this indebtedness long before the expiration of forty years.

This indebtedness could be made to constitute a mortgage upon the property, and it would be a first mortgage readily available to the Government or to any person who desired to use the security.

There is no mystery concerning these affairs nor any long-drawn-out bills necessary to accomplish honest or just purposes. There is not a member of this committee who could not within an hour frame a bill, and against this plan there is not a business man who could raise a single objection. It is the plain straightforward course which would be taken by any business man under the circumstances.

## THE COMPANY'S CLAIMS.

Against this mass of indebtedness the Central Pacific Railroad Company has large claims against the Government. There are millions of dollars in the Treasury of the United States which honestly belong to it under the judgment of the highest court in the land, and for which the United States has made no provision for payment. It also has claims against the Government for injuries caused by breach of the Government's contract with it. A simple clause inserted in the bill allowing the company to sue the United States upon these claims and establish their validity would put that to rest forever, and if any man upon this committee, after he shall have maturely considered the testimony now before it, has the slightest doubt as to the integrity of the directory of the Central Pacific road, or has the slightest doubt that every dollar that ever came into the treasury of that company has been lawfully and properly used, let a clause be thrown into that bill, and to this we make no objection, which will enable the United States to establish such fact, if fact it be, and to recover the amount of money illegally appropriated.

## THE FORTUNES OF THE DIRECTORS.

The directors of the Central Pacific Railroad Company are reputed to be wealthy, and it may be so. I believe and hope it is so. But the classic maxim, "Call no man happy until the day of his death," is equally applicable to finance. Call no man rich until the day of his death; and we may go a little further and say, not until his estate has been administered upon.

But whether these directors be rich or poor, all that they have is in property standing in their own names, and with which the public is thoroughly conversant. There has been no concealment, no covering up, none of the badges or insignia of fraud or wrong attached to any of their affairs.

And again, before proceeding to establish the points which I announced in the beginning, let me stop to put at rest forever the widely-circulated slander, that the men who built the Central Pacific and the Western Pacific railroads enriched themselves out of the bonds loaned to them by the Government of the United States.

## ALLEGED AMOUNT HELD OVER.

It has been alleged that, after the completion of the road, they had a surplus variously estimated at from $100,000,000 to $300,000,000. By what process of reasoning any one could have come to the conclusion that the directors built the road, paid for it, and saved out of the $27,000,000 in depreciated bonds which they received from the United States the sum of $100,000,000 I am unable to conceive. I propose right here, by evidence that cannot be gainsaid, to establish the fact that it cost to build the Central Pacific and the Western Pacific railroads all the money which the directors received from the Government and from their own first-mortgage bonds, for which they are liable. So that hereafter, when any one asserts that either one of the directors, at any time or place, appropriated one dollar of that money to his or their own use, it may be known that the man who makes that assertion is in one of two conditions: Either Providence, for some inscrutable reason, has created a being who can neither appreciate nor speak the truth, or that he lies for the mere lust of lying.

### EVIDENCE BEFORE THE COMMISSION.

To establish this I will take the figures made by this Commission, which are—I say it with all due respect—unfriendly figures; figures which I will hereafter during the course of this argument show to be wrong by millions on both sides; figures which I will show do not represent the actual cost, nor could they represent the actual cost, of the road within many millions of dollars; but they are sufficient for the important purpose here announced.

The bonds which the United States loaned—for they never loaned any money—to the Central Pacific and Western Pacific Railway Companies were, upon their face, payable in legal-tender notes. The cost of construction was paid for in gold, which was the only currency in use upon the Pacific coast; so that the company not only had to convert the Government bonds into gold, but they were compelled by the same circumstance to convert their own bonds into gold and stand the loss.

The bonds issued by the Government of the United States to the Central Pacific Railroad Company were the only bonds ever issued from 1861 down to the time of the resumption of specie payments, on which the Government itself did not stand the loss of the difference between gold and legal-tender notes.

### TERMS OF THE BONDS.

The bonds issued to us were payable in legal tenders, and were issued at their full face value. Any one who desires needs but to look at the newspapers of the dates at which these bonds were issued to learn what their value was. But you need not go to that trouble, for the proof is in the record before you.

Now, let us state the account, and state it on the unfriendly figures of this Commission. They say that the actual cost of the road from Sacramento to Ogden—737 miles—was $36,000,000; that the actual cost of construction of the Western Pacific railroad from Sacramento to San José—123 miles—was $5,000,000.

These estimates do not allow anything whatever for profits to contractors, nor do they cover the whole cost of the snow-sheds built in the year 1869, nor the cost of the rebuilding of the American river bridge. These estimates of cost of construction amount to $41,000,000. Add to that $53,000, cost of rebuilding the American river bridge, and $1,200,000, cost of snow-sheds, in excess of the amount included in the estimate, and they make in the aggregate $42,253,000 as the actual cost of constructing the road from San José to near Ogden.

### UNDER DIFFERENT CONDITIONS.

These figures were not made in the storms of the Sierras nor on the desert wastes of Nevada and Utah. They were made by two lawyers of this Commission, sitting in comfortable rooms, richly furnished, surrounded by engineers and stenographers. They were made twenty years after the fact and by men who were appalled at the present storm which has just swept along the Atlantic coast—a storm which, as compared to the storms of the Sierras, in which the directors of the road lived and had their being for three years, was as the gentle zephyr which cools the cheek of the love-sick maiden.

It is in proof here, and cannot be controverted, that the directors of the Central Pacific and the Western Pacific Railroad Companies received from the sale of Government bonds and from the sale of their own bonds, which constitute the foundation of the first mortgages, the sum of $41,480,000. All that the directors have received from the sale of the company's bonds and of the Government bonds was $41,480,000, according to the figures which this Commission makes, unreliable though they be and against us. The directors put, in gold, into the construction of the road $42,253,000. Here let this matter for the present rest, in answer, complete and conclusive, to the charge that these men or any of them ever diverted a single dollar of these moneys from the purposes for which they were intended. Later on I will look into this testimony.

### TAKING THEM TO THE START.

I will place you at Sacramento on the 8th day of January, 1863. I will show you the work which was done for the first three miles on the southern bank of the American river, a torrential stream, and will show you how costly and expensive was that work. I will take you across the then arid valley of the Sacramento and above the clouds to the summit of the Sierras. I will, as near as possible, convey to you an idea of what the storms are which every winter sweep over those mighty mountains. I will show the obstacles which had to be encountered and which were met and overcome before the days of the Burleigh drill and of high explosives. I will take you from the eastern foot of that range of mountains across the desert of Nevada, on which, from Reno to Corinne, for 500 miles but one single white man lived, and which produced no tree in all that distance out of which a board could be made, nor any of the materials of which the superstructure of railroads is reared; over that desert waste where we hauled water for miles to the line of the road and where none could be obtained in any other way.

When we have made this trip, when we have traveled over this line and brought ourselves back to 1863, 1864, 1865, 1866, 1867, 1868, 1869, you will be satisfied, beyond a shadow of a doubt, that $42,000,000 never constructed that line of railroad.

## GRAVITY OF THE ISSUES INVOLVED.

I have already said that I had listened to the proceedings before this committee with care and attention since its first organization; that I have heard all of the arguments and statements made here. Up to time when Governor Stanford addressed you this morning no one had ever presented the question of right or wrong.

It is with that question I propose to deal as briefly as possible, but if your patient kindness permits most thoroughly, for it involves not only a large sum of money, but it involves what is more sacred still, the character and reputation of the living and of the dead.

In time the transactions under investigation have covered nearly a third of a century, twenty-eight of the most eventful years of the history of the world, and in which more important things have occurred bearing upon the happiness and destiny of mankind than in any one century preceding. Most truly has New England's gifted poet said that "life greatens in these later years—the century's aloe blooms to-day."

So far as this nation is concerned, that period of twenty-eight years has been most eventful, and the event, not of the least consideration, which has left its impress upon the destinies of this country was the construction of the first transcontinental line of railway which was to bind in bonds of steel the old East to the young and growing West.

## THE STRUGGLE FOR THE ORIENT TRADE.

From the earliest history western nations have struggled to draw to themselves the trade which springs from the human hives of the Orient and the Indies. In the contest for this trade it is not an overstatement to say that millions of lives have been lost and other millions of dollars been spent.

At quite an early day in our history men who were then thought to be visionary dared to look forward and to anticipate the day when by means of a transcontinental road that great trade should be diverted from its old channels and carried across this country; that this nation, like Palmyra of old, would levy a just tribute upon the passing commerce of the world.

These dreams, visionary as they seemed to be, have, in part, been realized, and to-day, between the frozen North and the sunny South, seven lines of transcontinental road have come into existence. Lines of steamers, which are the result of private enterprise, ply upon the Pacific and bear to our Western shores for transportation to the East and Europe the teas, silks, and spices of the Orient and the Indies.

## THE SUEZ CANAL.

That all of those dreams have not now turned into realities and all of the commerce of that mighty East has not been given to us rests not upon things left undone by this people, but upon the fact that a great Frenchman with a bold hand reopened the ancient canal and shortened, by thousands of miles, the water line from Asia. De Lesseps spent in that work countless millions and has taken in honor all of the rewards which a grateful country could upon him bestow. No legislative committee has investigated him; no strange commissions, clothed with inquisitorial powers and functions unknown to the traditions of English-speaking peoples, have been called to render judgment upon him; no keen lawyer, the advocate of the French Government, has sat in his elegant office in Paris and computed how many tons of sand De Lesseps dug from the desert nor how many drops of sweat he poured out under a tropical sun in that achievement.

### THE VALUE OF A THROUGH LINE.

The importance of a railroad across the continent early impressed itself upon the people of the East. Many distinguished Southern statesmen advocated the construction of such a road on the line of the thirty-fifth parallel, and had their views been carried out and had that line been built before 1860 the South would have been united by rail with the Pacific coast, its population would have been diverted in that direction, and it is not beyond the bounds of possibility that the annual product of the gold of California during the years of the war would have flowed into and enriched the Confederate treasury, while the port of San Francisco might have sheltered its infant navy.

### THE FIRST STEP TAKEN.

But nothing was absolutely done. A survey of the various routes was made, under a congressional act, by Captain Stevens and completed in 1853. He ran a preliminary line from the Missouri river to Benicia, in California, and estimated the cost at that time of a single track between those two points at $115,000,000, less than it afterwards cost to build the Central and Union Pacific railroad.

In 1860 Mr. Judah, Mr. Stanford, Mr. Huntington, Mr. Hopkins, and the brothers Charles and Edward Crocker, three of whom are dead and three living, became interested in the project.

### THE DUTCH FLAT ROUTE CHOSEN.

They caused five preliminary surveys to be made across the Sierras to ascertain whether a practicable route for a railroad could be found, and at last settled upon the present route, then known as the Dutch Flat or the Donner route. They went to the summit of the Sierras and looked down upon Donner Lake, 1,200 feet below. The ascent of the mountain from the west, a rise of more than 7,000 feet in 83 miles, was barely practicable. The descent north of Donner Lake was impracticable and the descent on the south seemed nearly so. Solid walls of granite rose almost abruptly from Donner Lake 3,000 feet. Clinging to the sides of the precipice, passing under the projecting points, the road had to descend if it was ever built. The world had pronounced it impracticable, and if these men, when they first gazed upon it, had been trained railroad builders they would have assented to that judgment.

But they were not railroad builders. They were in the morning of their lives. They were numbered among the adventurous pioneers of the West, and with them enthusiasm took the place of judgment. They embarked upon the desperate undertaking and to its success pledged their fortunes, ventured their lives, and, against the combined judgment of the world, triumphed.

### AN EXCITING PROSPECT.

From their mountain stand-point they could look far upon the unbroken territory lying to the east and consider the rumors that were coming fast and thick of the hidden wealth which lay in its mountain fastnesses. They knew that no line of railroad had reached the Missouri river from the east; that for 2,000 miles there were Government posts to which the supplies had to be hauled by ox teams. They believed that if they could cross the Sierras and reach into this wilderness they would develop a mighty trade and have no competition except the slow-moving ox.

They did not ask Government aid, but returned to their homes and in 1861, under a general law of the State of California, organized the Central Pacific Railroad Company of California, with a nominal capital of $8,000,000, to construct a railroad from the city of Sacramento to the eastern boundary line of the State of California. They went to the Territorial Assembly of Nevada, laid their project before it, and received the consent of that Legislative Assembly to construct a railroad across the deserts of Nevada.

### THE ROCKY MOUNTAIN PASS.

It was supposed at that time that the Rocky Mountains, as their name implied, presented as great obstacles to the construction of a railroad as did the Sierras. They did not know, as it afterward turned out to be, that a way for the railroad builder had been prepared by nature from the banks of the Missouri to the eastern base of the Sierras, and that, so far from there being difficulties in the way, it would cost less to construct a railroad from the eastern base of the Sierra Nevada Mountains to the city of Chicago than it did to construct a railroad from the city of Sacramento across the mountains to their eastern base.

### UNDER DIFFERENT CONDITIONS.

Had no act of Congress ever been passed; had these men been allowed to work out their destiny in their own way, they would have slowly crossed the mountains at the minimum of expense. They had no competition for all the trade of the great interior except the competition of ox teams. Out of the proceeds of that trade, as things have since turned out, they could easily have extended the road to the city of Chicago, and would to-day in all probability have been free of debt and the wealthiest corporation in America.

## CONGRESSIONAL LEGISLATION.

Next in the cycle of events came the act of Congress of July 1, 1862. That act constitutes the basis of the contract between this company and the Government of the United States. As we are now considering the relations of these parties, and as we now assert that we have performed all the obligations of that contract, and that the United States has performed none of them, it becomes necessary, when truth and justice is in the end to be attained, to inquire what that contract was. It is a cardinal rule in the construction of contracts, whether legislative or otherwise, that the tribunal which is called upon to construe a contract must place itself as nearly as possible in the situation which the parties occupied at the time the contract was made; that it must not interpret a contract by the judgment which comes after the fact, but in the light of circumstances and facts surrounding.

## ACT OF JULY, 1862.

We have passed the point at which the Central Pacific Railroad Company was organized. We have seen that it antedated any act of Congress. We now come to the 1st of July, 1862, the date of the passage of the first Pacific railroad act.

At that time the population of the United States was little more than 30,000,000, and this population was confined chiefly to the States lying east of the Mississippi river. Minnesota, Iowa, Missouri, and Arkansas—the States lying west of the Mississippi river—then had a population small in comparison with the present population of either. This population, by the very necessities of the situation, was confined almost entirely to territory lying within a few miles of the navigable streams.

### A VAST AREA.

West of the Missouri river, south of British Columbia, north of the Rio Grande, and east of the Sierra Nevada range was a territory almost, if not quite, in extent equaling that east of the Mississippi river. It was over 1,400 miles in length and over 1,300 miles in breadth. It was greater in extent and richer in resources than all the territory which Cæear's legions gave to the dominion of Rome. It was a territory without a white settlement (except the Mormon settlement at Salt Lake) of any considerable extent. From the Missouri river to the Sierras was a solitude, the silence of which was unbroken save by the trapper, wild animals, and the wilder savage tribes, its only occupants.

### THE AMERICAN DESERT.

The whole of it as late as 1850 was marked upon the maps as the American Sahara or the great unexplored desert. In the length and breadth of this territory there were but few navigable streams, and its occupation by civilized man, as it then stood, was an impossibility. The situation even upon and near the banks of the Missouri river is graphically described by the chief engineer of the Union Pacific road in his report to the president of that company under date of December 1, 1869. The chief engineer says:

> "In 1863 and 1864 surveys were inaugurated, but in 1866 the country was systematically occupied, and day and night, in summer and winter, the explorations were pushed forward through dangers and hardships that very few men at this day appreciate. Every mile had to be run within range of the musket. In making the surveys numbers of our men, some of the ablest and most promising, were killed, and during the construction our stock was run off by the hundreds—I might add, by the thousands. The lack of confidence in the project, even in localities to be the most benefited, was so great that laborers demanded their pay in advance before they would perform a day's work."

### INDIANS FAIRLY TREATED.

The situation in like respect was not less dangerous between the Sierras and Ogden. That country was infested with hostile Indian tribes, constantly at war with the whites. While this danger existed and had to be met, it was not by force of arms, but a treaty was made between the Central Pacific Company and the Indian tribes between the Sierras and Ogden, which has on each side been maintained from that day to this most faithfully.

Many times since the construction of the road these tribes have been at war with the United States, but in no single instance have they ever violated that solemn treaty or injured a man connected with the railroad or a passenger borne upon its trains. The reverse is true as to the Union Pacific. It was built in the presence of an armed force, and its trains have since been destroyed by hostile tribes. The influence of the treaty between the Central Pacific and these Indian tribes was felt long years afterward, and still is felt on the line of the Southern Pacific railroad. The same obligations were impliedly entered into between the Apache Indians, the wildest tribe known to the continent, and the railroad company, and, although that tribe has carried murder and arson over the Territories of New Mexico and Arizona and the northern States of Mexico, yet in no single instance has it interfered with the trains of the Southern Pacific or with the passengers or with the section men, although repeatedly other parties have crossed and recrossed the track. In striking contrast to the faith kept by Piutes and Apaches stands the broken faith of a civilized nation with this company.

### OBJECT OF THE RAILROAD ACT.

As a military necessity and not to loan money and secure its repayment, but to secure the construction of a railroad which should be a Government instrument in peace, as well as in war, and to provide for its maintenance forever, the act of July 1, 1862, was passed, chartering the Union Pacific and making certain offers of aid to the Central Pacific, then in existence and in operation as a corporation, of the public land of the United States, then in the exclusive possession and occupation of savage tribes and uninhabitable and over which the United States exercised no more authority beyond the range of rifle-shot from its military posts than it exercises now over the interior of Africa.

### TERMS OF THE GRANT.

Of this territory the United States promised to give to each of these companies five alternate sections per mile on each side of the line of its road, excepting all mineral lands from the grant. It also agreed that so soon as the line of the road was marked the Government of the United States would survey these lands. It also agreed that whenever forty consecutive miles of either of said railroads or telegraph lines were completed the United States should issue to the companies completing said sections bonds of the United States in the sum of $1,000 each, payable thirty years after date and bearing 6 per cent. per annum interest.

These grants were made on certain conditions subsequent, among which were conditions that the companies should keep the railroad and telegraph lines in repair and should at all times for the Government transmit dispatches over said telegraph lines and transport mails, troops, munitions of war, supplies, and public stores upon the road.

The act provided for its acceptance by the companies, and these conditions were formally accepted by the Central Pacific Railroad Company on the 7th of October, 1862, and the actual work of construction was commenced on the 8th day of January, 1863.

On that day the first shovelful of earth was turned at

Sacramento, and the first railroad that was ever intended to be constructed beyond the line of civilization was commenced.

On the 4th of July, 1828, at the commencement of the construction of the first railroad built in the United States and at the turning of the first shovelful of earth on that line, the act being performed by Charles Carroll, of Carrollton, then the only surviving signer of the Declaration of Independence, he said:

> "I consider this among the most important acts of my life, second only to that of signing the Declaration of Independence, even if second to that."

The boldest thinker living at the turning of the first shovelful of earth which marked the commencement of the Central Pacific railroad could not have foretold the wonderful consequences which were to follow. In the public mind and in Congress the gravest doubts existed as to the practicability of the undertaking.

The territory which has been opened as the consequence of that act is now crossed and recrossed by railroads without number. Its wealth and population have increased and its resources have been developed beyond all expectations. Not only has this territory been opened as a consequence of that act, but, following the example set, railroads have pushed in advance of civilization through the great Northwest. The whole country has been benefited by the accession of territory and property, and has become so rich that its debt, which at the close of the war it was considered impossible to pay, has been nearly extinguished, while the attention of all thoughtful statesmen is no longer occupied with the question of how revenue may be derived to carry on and maintain the functions of the Government, its civil list, its army and navy, but is directed to the manner in which its Treasury may be prevented from overflowing.

### THE ACTUAL COST.

To secure the construction of the Central Pacific railroad and to secure these results, and not at this point to consider the actual money profit to the Government, the expense incurred by the United States, if it should never receive a dollar in return, was about $27,000,000 in its bonds, then averaging about 70 cents on the dollar—a sum so insignificant that it will not amount, at the date it becomes payable, to over 30 cents to each person then in the United States—a sum so paltry in comparison with the result attained that it will, when history shall have been written, be a matter of wonder that a great Government like this should have pursued as though they were outlaws the men who inaugurated and carried out the work which led to these consequences and which gave to civilization and to the Union such a magnificent domain.

### THE CONNECTING COMPANY.

The Union Pacific Company could not accept the provision of the act of 1862. Mr. Adams tells you that books were opened in all the prominent cities of the North, and that for the stock, which has since become so valuable, but $2,200 was subscribed. The Union Pacific did not commence work until 1865, after the passage of the act of July 2, 1864. At that time the Central Pacific road was completed to Clipper Gap, 42 miles east of Sacramento, and had reached an elevation of 1,600 feet above the level of the sea.

### BUSILY EMPLOYED.

In 1866 the Union Pacific was vigorously pressing its work in the Platte Valley, and had completed at the end of the year 260 miles, while the Central Pacific had passed Cisco and was 80 miles east of Sacramento and 6,000 feet above the level of the sea.

### THE AMENDATORY ACT.

On the 2d of July, 1864, before any part of the Union Pacific had been constructed, Congress passed an act amending in many respects the act of 1862. It increased the land subsidy to ten sections, instead of five, and directly authorized each company, on the completion of each section of its road, to issue its first-mortgage bonds, respectively, on the telegraph and railroad lines to an amount not exceeding the amount, and of even tenor and date, time of maturity and rate of interest, with the bonds authorized to be issued by the United States.

Some of the reasons for the passage of this amendatory act, which it is important for you now to consider, were given by the Supreme Court of the United States in the case of the United States *vs.* The Union Pacific Railway Company, 91 United States Rep., 79. Speaking of the construction of these acts, that august tribunal said:

### OPINION OF THE SUPREME COURT.

"In construing an act of Congress we are not at liberty to recur to the views of individual members in debate nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used; but the courts, in construing a statute, may with propriety revert to the history of the times when it was passed, and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it.

"Many of the provisions in the original act of 1862 are outside of the usual course of legislative action and cannot be construed without reference to the circumstances which existed when it was passed. The war of the rebellion was in progress, and, owing to the complications with England, the country had become alarmed for the safety of our Pacific possessions. The loss of them was feared should the complications result in open rupture; but even if this fear were groundless it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes to its citizens. It is true the threatened danger was happily averted, but wisdom points out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country and furnish a cheap and expeditious mode for the transportation of troops and supplies. If it did nothing more than afford the required protection to the Pacific States it was fit that the Government, in the performance of an imperative duty, could not justly withhold the aid necessary to build it, and so strong and pervading was the opinion that it is by no means certain that the people would have justified Congress if it had departed from the then settled policy of the country regarding works of internal improvements and charged the Government itself with the direct execution of the enterprise.

"This enterprise was viewed as a national undertaking, for national purposes, and the public mind was directed to the end in view rather than to the particular means of securing it. Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion besides the protection of an exposed frontier.

"There was a vast unpeopled territory lying between the Missouri and Sacramento rivers which was practically worthless without the facilities afforded by a railroad for the transportation of persons and property. With its construction the agricultural and mineral resources of this territory could be developed, settlements made where settlements were possible, and thereby the wealth and power of the United States largely increased; and there was also the pressing want, in time of peace even, of an improved and cheaper method of transportation of the mails and supplies for the army and the Indians.

"It was in the presence of these facts that Congress undertook to deal with the subject of this railroad. The difficulties in the way of building it were great and by many intelligent persons considered insurmountable. Although a free people, when resolved upon a course of action, can accomplish great results, the scheme of building a railroad 2,000 miles in length over deserts, across mountains, and through a country inhabited by Indians jealous of all intrusion upon their rights was universally regarded at the time as a bold and hazardous undertaking."

### OTHER OBJECTS.

These reasons, so strongly stated, were some of the many which moved Congress to promote the immediate construction of a transcontiental railroad. There were other grave and potent reasons.

While the act of 1864 was under discussion Johnson, with his army, confronted Sherman. Lee held Grant in check at Petersburg and Early was advancing upon the National Capital. He took Harper's Ferry on the 4th of July, 1864, two days after the passage of the act, and before its approval was announced by the body in which it had originated the Confederate flag was in plain sight of the Capital and the drum-beat of Early's troops could be heard; the unfortunate Austrian was upon the throne of Mexico; Bazaine with the French troops, occupied the country; Napoleon III was seeking an alliance with England in order to intervene in favor of the Confederacy; complications of the most serious character with England existed, and that alliance was likely to be consummated. It would have been followed to a certainty by a blockade of the Pacific coast, if not by the capture and occupation of California and Oregon. Nearly the whole power of the National Government had been exhausted; its finances had been crippled, and so clouded was the political horizon that one of the great national parties, on the 29th day of August, 1864, declared that the war was a failure, and that peace should be made at almost any sacrifice.

### A SITUATION FULL OF DANGER.

It is true that peace came sooner than any one expected. It is true that the resources of the Confederacy were being fast exhausted; but they had two small but veteran armies in the field led by men who will always rank with the first captains of the world.

The illustrious General Johnson, with 50,000 or 60,000 veteran troops, was slowly falling back before the advance of Sherman's army. That other great captain, Lee, was confronting Grant with another army of 60,000 veteran soldiers, and while upon the doctrine of chances it seemed that each must fail, yet Congress remembered and the people knew that the grandest triumphs of our race upon the field had often been gained after hope had fled.

Seemingly overwhelming as were the forces which were moving upon these two great captains, it is not improbable that if a mistake had been made in the presence of either the issue might have been different.

### PRESSING FORWARD.

While these events were transpiring, and before a single shovelful of earth had been turned upon the Union Pacific, the projectors of the Central Pacific were pushing their work as rapidly as possible.

Loyal to the Government and with faith, confidence, and hope in its ultimate success, it accepted its depreciated bonds at par, and bent every energy to consummate, at the earliest moment possible, the object which Congress and the people of the United States so earnestly desired.

At par the whole amount of the Government loan to the Central Pacific was less than the expenditures of the Government for 120 hours.

### CONGRESSIONAL ANXIETY.

So anxious was Congress for the speedy completion of this road, and so important was it to military defense, that it reserved in these acts the right to take charge of and prosecute the work as a military necessity if the contracting parties failed to carry it forward with the requisite speed and energy.

Frequently, during the construction of the road, locomotives built for the company at great expense and absolutely necessary to the diligent prosecution of its work were freely given over to the Federal Government by those patriotic men, because needed for present use on the more immediate scene of conflict. They did not stand back in that dread hour when their resources were needed to assist this Government and haggle on the terms.

Under the amendatory act of 1864 the whole of the Union Pacific road was constructed and the major portion of the Central Pacific. With both of these acts, in letter and spirit, has the Central Pacific Railroad Company complied. Not only this, but under the demand of the people of the United States, and in order to make the connection between the States of the Union, the road was completed seven years in advance of the time which Congress had fixed for its completion, saving to the Government of the United States, in the transportation of its mails, of troops, munitions of war, and Indian supplies, in the seven years alone, an amount more than the whole sum advanced by the Government to aid in the construction of the road.

## INDIAN PROBLEM SOLVED.

The construction of the road virtually solved the Indian problem, and within the last few years forts without number have been dismantled and abandoned, and the troops of the United States, instead of being scattered through a wild territory, have been concentrated chiefly upon the seaboard, saving to the Government a sum I leave to be computed by its officers, with the bare statement of the fact that prior to the completion of the road it cost, on an average, $2,500,000 to maintain a regiment of soldiers on the plains, and $1,500,000 to maintain a regiment upon the seaboard.

### THE PRESENT PURPOSE.

Now, may it please you, Mr. Chairman and gentlemen of the committee, the task we have in hand at present is to ascertain what obligations the Government and the company assumed toward each other.

There are so many collateral facts and considerations to be brought in that one speaking as I am speaking, without notes, cannot always put things in their logical sequence.

It is a matter of constant occurrence in these days to hear the assertion made that the gifts and donations made by the Government to this railroad were munificent, and the President of the United States, in transmitting the report of the Commission, speaks of them as such.

### GOVERNMENTAL SHORTCOMINGS.

Such assertions place us in the attitude of having been beggars at the hands of the National Government. That was not our attitude in any respect. With our own means, and supplemented by indomitable will and courage, we undertook to construct this road. We would have constructed it had the Government of the United States never made a single contribution toward the work. We would have been far better off now if that contribution had not been made. I have grown sick and tired of hearing of the generosity of the Government in this matter. The generosity was upon our side. The Government wanted the road; wanted it for military purposes; wanted its use for all time to come. We built it for them, and in return they gave, not money, but their depreciated credit. They did not even give their bonds at the time at which they promised to give them. They caused us, by reason of this delay, to add to our large expenditures upon the interest account, for at the time we were constructing the road the rate of interest in the State of California was from 2 to 3 per cent. a month, and we often had to pay that rate upon large sums of money by reason of the delay of the Government in complying with its contract.

### THE LAND GRANT.

It is true that they promised to give us ten alternate sections of land upon each side of the railroad. They have never complied with that promise. They promised to give us lands over which they had no more dominion than had the devil over the land which he on the mountain promised. These lands had to be rescued from the Indian tribes then in their occupation.

### THE ACTUAL SITUATION.

We were not beggars nor suppliants at the hands of the United States. We were then strong and the United States weak. They were the suppliants at our hands. The United States loaned the bonds and they exact payment with usury.

I have yet to learn that a man who borrows money from another, gives him ample security—all the security which he asks—and pays him a rate of interest for it far in excess of what he could borrow money for, is under obligations to the lender.

When we shall have paid back in gold the money which we borrowed in legal tenders what will we have from the Government? We will have its unfilled promise to convey to us these alternate sections of land. This company has not received up to the present day from the sale of lands granted by this act to exceed $3,000,000. Charged upon the books of this company as expenses for surveys and expenses in the endeavor to obtain these lands is over $1,600,000 in gold, while the trouble and annoyance, ill-feeling and ill-will, which has resulted from our having a claim to them would, if computed, more than exceed the balance.

As I have said, I am not proceeding and cannot proceed in logical sequence; so let me turn for a moment to what was said by the great statesmen who passed the act of 1862; let us see what interpretation they placed upon it; let us learn what they thought were the obligations they were imposing upon this company; let us see upon which side it was considered the favor then was.

On the 17th of June, 1862, when the act of 1862 was under discussion in the Senate, Mr. Wilson, of Massachusetts, said:

"I have little confidence in the estimate made by the Senators and members of the House of Representatives as to the great profits which are to be made and the immense business to be done by this road. I give no grudging vote in giving away either money or land. I would sink $100,000,000 to build the road, and do it most cheerfully, and think I had done a great thing for my country if I could bring it about. What are $75,000,000 or $100,000,000 to open a railroad across the central regions of this continent which will connect the people of the Pacific and the Atlantic and bind them together?"

On the same day he used the following language:

"As to the security the United States has taken on this road, I would not give the paper it is written upon for the whole of it. I do not suppose it is ever to come back in any form except in doing on the road the business we need and carrying our mails and munitions of war. In my judgment, we ought not to vote for the bill with the expectation or with the understanding that the money which we advance for this road is ever to come back in the Treasury of the United States. I vote for the bill with the expectation that all we get out of the road (and I think that is a great deal) will be mail-carrying and the carrying of munitions of war and such things as the Government needs, and I vote for it cheerfully, and with that view I do not expect any of our money back. I believe no man can examine the subject and believe it will come back in any other way than as provided for by this bill, and that provision is for the carrying of the mails and doing certain other work for the Government."

### SIMILAR VIEWS.

On the same subject Mr. Clark, of New Hampshire, said:

"Whether I am right or not, I do not build the road because I think it is to be a paying one. I build it as a political necessity to bind the country together and hold it together, and I do not care whether it is to pay or not. Here is the money of the Government to build it with. I want to hold a portion of the money until we get through and can let them have it all."

Mr. Collamar, of Vermont, one of the most distinguished men of his day, said:

"The bill catches the idea and, in this section, provides for the repayment of the loan, as the gentlemen call it. In a subsequent section it is provided that the payment shall be made in the carrying of the mail, supplies, and military stores of the Government at fair service prices, and also five per cent. of the net proceeds or sums to be set aside for the Government. That is all the provision there is in the bill for payment."

### THE CALIFORNIA SENATORS.

Mr. Latham, of California, said:

"The loan of the public credit at six per cent. for thirty years, sixty-five millions, with absolute security by lien, with stipulations by sinking fund from profits for the liquidation of the principal. Official reports and other authoritative data show that the average annual cost, even in times of peace, in the transportation of troops, with munitions of war, subsistence, and quartermaster supplies, may be set down at $7,300,000. The interest on the credit loan of sixty-five millions will be annually $3,900,000, leaving a net excess of $3,400,000 over the present cost, thus appealing with great force to the economy of the measure and showing beyond cavil or controversy that the Government will not have a dime to pay on account of its credit, nor risk a dollar by authorizing the construction of this work."

Senator McDougal, of California, one of the ablest lawyers of his day, said:

"I have had occasion before to remark that this Government is now paying over seven millions per annum for the services which this road is bound to perform. That is about 100 per cent. more than the maximum interest upon the entire amount of bonds that will be issued by the United States when the road is completed. This Government is to-day on a peace establishment, without any war necessity, paying for the same service 100 per cent. more than the entire interest on the amount of bonds called for by the bill. Besides that, it is provided that five per cent. of the net proceeds shall be paid over to the Federal Government every year. Now, let me say if this road is to be built, it is to be built not merely with the money advanced by the Government, but by money out of the pockets of private individuals. It is proposed that the Government shall advance $60,000,000, or rather their bonds at thirty years, as the road is completed, in the course of a series of years, so that the interest at no time can be equal to the service to be rendered by the road as it progresses, and that the Government really requires no service except a compliance on the part of the company with the contract made. It was not intended that there should be a judgment of foreclosure and a sale of this road on a failure to pay. We wish it to be distinctly understood that the bill is not framed with the intention to have a foreclosure. In case they failed to perform their contract, that is another thing. That is a stipulation; that is a forfeiture, in terms of law—a very different thing from a foreclosure for the non-payment of bonds.

"The calculation can be simply made that at the present amount of transportation over the road, supposing the Government did no more business, that alone would pay the interest and the principal of the bonds in less than twenty years, making it a direct piece of economy if the Government had to pay for them all."

### A REASONABLE CONCLUSION.

"However, I am not disposed to discuss this matter. I say it was not understood that the Government was to come in as a creditor and seize the road on the non-payment of interest. It is the business of the Government to pay the interest because we furnish the transportation."

This is what the statesmen who framed the bill thought they were doing. They never contemplated that the Government was loaning money and obtaining security for its return. They never dreamed that the hour would come when the Government of the United States would assume toward these companies the attitude of the usurer—receiving from them all of the benefits bargained for, and yet requiring the companies to return, with usury, all the United States had given.

### THE PURPOSE OF THE STATUTE.

I propose now to show, both upon the language of the act and upon a rational interpretation, that this company never absolutely undertook or promised to repay to the Government of the United States the bonds which the Government advanced. I will take up first the act of 1862. I need not refer to the other act, because for the purposes of this argument the construction of both is the same.

The act of 1862 is entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes."

Turning to section 18 of the act, in the body of the act, we find it there declared that the purpose of the act was to promote the public interest and welfare by the construction of such railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times, but particularly in times of war, the use and benefits of the same for postal, military, and other purposes.

Here we have the declared purposes of this act, but by new and strange inventions the United States stands before this committee and claims that the purpose of the act was to loan the money of the United States at interest and to secure its repayment. Such a construction, as will hereafter be seen, would absolutely defeat the purposes of the act.

### WHAT THE ACT SAYS.

The first section of the act provides for the incorporation of the Union Pacific Railroad Company and the mode and manner of carrying on the business of that corporation.

Section two grants the right of way through the public lands of the United States.

Section three declares that there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph lines, and to secure the safe and speedy transportation of mails, troops, and munitions of war and public stores thereon, every alternate section of land, &c.

Section four provides absolutely that whenever the company has completed forty consecutive miles of any portion of said railroad the President of the United States shall appoint three commissioners to examine the same and report to him, and, upon the certificate of the commissioners to that effect, patents shall issue conveying the right and title of said lands to said company on each side of the road as far as the same is completed, &c.

Section five provides for the purposes herein mentioned, and let us again refer to those purposes. They are to aid in the construction of a road and to secure its use to the United States, not for a day, not for an hour, but forever, as an instrument of the United States, to be used in time of peace and in time of war. That is the purpose and the scope of this act. It had no other. The Government never exacted a promise from the company to repay the money, nor can the act, in accordance with this theory, be construed to give the right of foreclosure and sale.

### THE REAL MEANING.

The act provides that the company is to build the road and maintain it, and for all time to come hold it subject to the order of the United States for the transportation of troops, mails, munitions of war, and military stores, and to the end that this object may be attained the United States exacts all kinds of security; but it never exacted a promise to repay the money. The framers of the bill never supposed that they had authorized a sale of this road under foreclosure. They provided that the payments should be made by taking 5 per cent. of the net proceeds of the road, and by adding to that sum the whole amount of the cost of Government transportation, and then, if at the end of thirty years, when these bonds become payable, the United States had not received a sum sufficient for reimbursement, the Government might do what?—not bring a suit against the company to recover the balance due—not sell the road; but the Government might enter upon and take possession of the road and hold it for the use and benefit of the United States.

It is elementary law that no action for debt can be maintained upon a mortgage unless that mortgage contains an express promise to repay the debt. It is elementary law that, though the mortgage may recite an indebtedness, no such action can be maintained. It is elementary law that if there is no express promise in the mortgage to pay the debt, and there is a condition in the mortgage that if the debt be not paid the mortgagee may enter upon and take possession of the property—that this is the only remedy he has.

So the case stands; and we are now considering the legal rights of the company and of the United States. If at the end of the thirty years the company does not repay the money, the United States, if it has complied with all the conditions on its part, may enter upon and take possession of the road.

No one denies that we have built the road; no one denies that we have maintained and kept it in order and repair. Ours is the election at the end of thirty years to retain the road or to surrender it to the United States, and when we make that election, if we surrender it to the Government, we are under no further obligations. To give the act a different construction would be to entirely defeat its purpose. If the Government should foreclose the mortgage and sell the road the purchaser would take it relieved from all obligations to the Government, and the main intent and purpose of this act would be defeated. That this is true—that Congress never contemplated any other construction—is proved by the fact that when Congress, in 1864, amended the act and authorized a mortgage for the first time to be made upon this road they provided that that mortgage should be superior to the lien of the United States. They allowed that mortgage to be foreclosed; they allowed the road to be sold under it; but they expressly provided that that mortgage should be subordinate to the great purpose of this act—subordinate to the Government's right to control and maintain this road for the main purposes for which it was built. The obligations then assumed by the company were to build the road, to keep it in repair, to pay 5 per cent. of the net proceeds, to allow the Government to retain the cost of its own transportation, and at the end of thirty years, if any balance were due the Government, to pay that or to surrender the road. Such was the understanding when the act was passed. Senator McDougal only voiced the intent of Congress when, in the debate in the Senate on the Pacific railroad bill, he said:

> "It is proposed that the Government shall advance $60,000,000, or rather their bonds at thirty years, as the road is completed, in the course of a series of years, so that the interest at no time can be equal to the service to be rendered by the road as it progresses, and that the Government really requires no service except a compliance on the part of the company with the contract made. It was not intended that there should be a judgment of foreclosure and a sale of this road on a failure to pay. We wish it to be distinctly understood that the bill is not framed with the intention to have a foreclosure. In case they failed to perform their contract, that is another thing. That is a stipulation; that is a forfeiture, in terms of law—a very different thing from a foreclosure for the non-payment of bonds."

### MUTUAL CONDITIONS.

But that contract was not one-sided. It contained covenants and conditions which were to be performed by the Government of the United States. It was a contract resting upon mutual and dependent covenants, and the Government, if it has violated the conditions on its part, cannot enforce the conditions to be performed by us.

It is an elementary rule of law that one who seeks redress upon a contract containing mutual and dependent covenants must, before he can succeed, have performed all the covenants on his part to be performed.

If at the end of the thirty years we should refuse to pay the balance, and the Government should bring its action to recover possession of the property, we would have a right to defend that action by saying to the Government, "You have not performed the conditions on your part, and therefore you cannot exact performance from us."

This would be a complete answer to an action at law. If the Government should proceed in equity, then before it could recover anything from us the chancellor would require it either to perform all of the obligations of that contract toward us, or, if those obligations were incapable of specific performance, to compensate us in damages. If it should ever come to that we feel very confident that the amount, if any, which the Government could recover would be so small that it would not be beyond our reach to make the payment.

## FULLY PERFORMED.

I said in the beginning that I would not only show that we had performed the acts on our part to be performed, but I would show that we had discharged the obligations of that contract toward the Government in the same spirit in which the laws require a guardian to discharge any obligations toward his ward.

It is said now that the Government made a great mistake in not requiring this company to pay a specific sum, and in not requiring this company to provide a sinking fund to discharge these obligations. We hear on every side that the company is in fault because it has not done these things.

I think the Government ought to be pretty well satisfied with any contractor who performs the obligations of his contract.

We might say in complete answer to all these matters that " it was not so nominated in the bond."

## NO INTENT TO DEFRAUD.

It has been said that we intended to defraud the Government. There has been no hour from 1869, the date of the completion of this road, to the present, in which if the directors of this company had had the will or inclination to wreck this road and entirely destroy the Government's security they could not have so done. They had but to make a default in the payment of interest on the first-mortgage bonds, permit foreclosure and a sale, and before Congress could have acted or made an appropriation, if the proper time had been selected for bringing such a suit and making a sale, the title of the purchaser would have vested and become absolute and the second mortgage would have been undercut.

### WHAT MIGHT BE.

More than this, the State of California, from 1880 down to the present time, has levied a tax upon the franchise of this company. So far as the Central Pacific Railroad Company has any franchise of value, it is derived from the Government of the United States. That franchise has been assessed and taxed. All that the directors ever had to do was to sit quietly by and allow suits involving these questions to go by default and its property to be sold, including the franchise, and undercut both the first and second mortgages.

But this has not been done. The course of the company was faithful to the Government. It resisted this alluring bait and stubbornly contested the right to collect this tax. It was the duty of the directors toward the Government of the United States to challenge the right of anybody to impair the property or the interests of the United States in the road. They were bound as honorable men to do it, and they did it.

### WITHSTOOD TEMPTATION.

Yet at one time, when their course was misunderstood in California, there was such a storm raised that the Legislature was convened in extra session and political parties were rent in twain over this very act. Aye, more than that, when this company a few years ago stood in the Supreme Court of the United States and said to that Court that the franchise which the Government gave to them the interests which the United States had in that road could not be the subject of State taxation ; that no State could take from the

United States its right to control and manage the road and sell it at public auction for taxes, the company stood there in the faithful discharge of its duties, while the Attorney General of the United States represented the other side, and the whole power which this Government could command was wielded against its interests and against the security which it had. We had but to be silent in that hour to have closed out forever the interest which the Government of the United States had in this road, and no men knew this better than the directors of the Central Pacific railroad.

As they then stood faithful to the United States, they now stand faithful to the trust which the stockholders of the company have reposed in them, and will resist to the utmost of their power any assault made upon their rights, come from whatever source it may.

### SINKING FUND.

We did what the people who are assailing us say we ought to have done. We did establish a sinking fund. We established and have maintained most faithfully a sinking fund to pay off the debt which constitutes the first mortgage on this road. Every dollar of payment upon that debt relieves the United States to that extent. We have promptly paid the interest upon that debt and have kept it down. We have now $10,000,000 in the hands of the trustees to apply upon the principal of that debt. We will have in ten years more $12,000,000 additional. We have made provisions by which, on the first day of November, 1898, $22,000,000 of the first mortgages will be extinguished.

### EFFORTS TO ESTABLISH SINKING FUND TO PAY GOVERNMENT BONDS.

Moreover, these directors saw that the expectations, not only of themselves but of the Government, had been disappointed in the amount of money that would come into the hands of the Government for transportation—not that the Government did not receive these benefits.

The Government understood when they passed this bill, and we understood when we accepted it, that the Government payments would amount to over $7,000,000 per year.

Under the provisions of the act of 1864 we were to have one-half of our share of that and the Government was to have the other half. The Government has obtained its half because it has had all the service. It has received the same benefits precisely that it would have received if it had paid $7,000,000 into the treasury of the companies and withdrawn half of it; but the companies have not received their half and never can get it.

### SINKING FUND SUGGESTED.

When it became apparent that this was the condition of things we came to the Government of the United States, and we presented the situation. We said: "There is no provision for a sinking fund. One should be established." We said: "Your debt is not going to be paid by five per cent. of the net proceeds or by the retention of one-half the charges for Government transportation." We said that the Government bonds and the first-mortgage bonds were going to fall due at the same time. We said: "We beg you to join with us in making a provision for a sinking fund."

Now, I want no misunderstanding about this. The alleged failure to establish a sinking fund to pay off the Government bonds is the only charge which is pressed with any force by the Commission against the Central Pacific Company. I am here to prove that the company desired to make the provision and the United States Government prevented it. Let the responsibility fall in the proper place—on the Government of the United States. Here let me accord to the Union Pacific Railroad Company in this respect the same meed of justice which is claimed by ourselves.

## THE LEGISLATION PROPOSED.

On the 12th day of November, 1877, Sidney Dillon, of the Pacific Railroad Company, and C. P. Huntington, vice-president of the Central Pacific Railroad Company, transmitted the following letter to the Judiciary Committee of the United States Senate, and with it they presented a bill embodying the provisions needed, and asked its passage by Congress:

"In accordance with the request of your committee, at the close of the session on Saturday last, we submitted the accompanying proposition, with the following suggestions:

"Nearly three years since the office of the Union Pacific and Central Pacific railroad called the attention of the Secretary of the Treasury to the fact that, contrary to the general expectation at the inception of the enterprise, a balance of the accounts in his ledger was accumulating against them, which, unless some remedy of legislation was soon had, would amount, by the time it became due and payable, to a sum which it might be embarrassing to the companies to pay simultaneously with their first-mortgage debt, and greater than the value of the subordinated lien of the Government on the properties themselves, and suggested the propriety of a modification of so much of the acts of 1862 and 1864 as relates to the time and manner of the payment of the advances in the form of United States bonds issued to aid the construction of the Pacific railroad, which would definitely and certainly put the whole amount in process of liquidation, and, at the same time, put an end to the exhausting and unprofitable controversy thereupon.

"That suggestion looked to the creation of a sinking fund, with fixed sums to be paid semi-annually into the Treasury, as most business-like and prudent, indeed, the only available expedient for discharging a debt of this character and magnitude, instead of the present plan of applying variable sums, dependent upon the amounts we get for Government transportation, together with a portion of the net revenues of the companies, both of which must prove not only inadequate to the purpose, but also a fruitful source of contention.

## THE WAY NOT CLEAR.

"The Secretary of the Treasury and very many Senators and Representatives have expressed themselves in favor of the institution of such a fund, but some difference of opinion has arisen as to the power of Congress to impose its settlement with regard to the consent of the companies or the consequence to their creditors, and also as to the amounts necessary for the sinking fund. The companies are in duty bound to resist any attempt to impair their vested rights or to take their property without due process of law, but at the same time they recognize that further litigation in regard to their claims is as needless as it is wasteful, inasmuch as both parties have the same end in view, to wit, a final, full, and conclusive settlement. To this end the companies have incorporated into their original sinking-fund proposition which received the revision and, with some modifications, the approval of the Senate Railroad Committee of the last Congress, the several suggestions of Senators and Representatives looking toward an amicable arrangement, which are here submitted to your committee in the form of a bill.

## AMENDMENTS ADOPTED.

"It will be seen that the principal point of differing opinions is the amount of annual contribution to the sinking fund. The companies have adopted the amendments suggested by certain Senators, which were well received during the deliberations thereon, and which leave the amounts necessary and sufficient to execute the purpose of the sinking fund to be computed by the Secretary of the Treasury, thus referring the arithmetical computation to the skilled accountants of the Treasury, where it would seem to belong.

"In the bill proposed by us the term of duration of the fund is placed at five years beyond the date when the last issued bonds (the bulk of the whole) fall due; to which no strenuous objection is anywhere raised. This extension of time is no more than a fair allowance for the delay in instituting the fund, through no fault of the company, and for the unmerited withholding of large sums due them for several years on transportation account; and it is also just and reasonable because of the further fact that the roads were opened seven years earlier than the contract with the Government called for, at a greatly increased cost.

### SHOULD BEAR INTEREST.

"It is only common justice that the sinking fund should bear interest and accumulate at the rate these charges are running against the companies, as the Government has the option of calling in its 6 per cent. debt and of using those payments to the fund for the purpose. In other words, in consideration of an extension of about five years in the maturity of the debt, the company voluntarily undertake to pay the greater part of it within twenty years before any part of it is due, and to devote to this purpose not merely the revenues from the roads aided by bonds, but also the revenues of the non-aided roads in order to bring the semi-annual payments within the probable ability of the companies to comply with the bill, if it shall become a law, without depriving them of the power to meet their interest engagements and the sinking funds for their own bonded debts.

### DEEDING BACK CERTAIN LANDS.

"At the same time, to maintain their roads in use up to the most efficient standard, it is deemed necessary to retain the provisions for the conveyance back to the Government of the alternate sections of land lying along the line of the roads between the one hundred and fourth meridian and the eastern boundary of California. There is another desirable end to be reached by so doing.

"These lands, 'the grazing and meat lands of the continent,' are interspersed with an equal amount of retained Government lands, the whole belt of which, 1,200 miles long and 40 miles wide, was almost valueless when we received them, although we are accustomed to hear them spoken of as a munificent country. They have now a positive value, conferred upon them by the presence of our roads, and are susceptible of sustaining immense herds of cattle, with occasional tracts adapted to cultivation by irrigation if they could only be divided and held in large solid tracts having due access to the available water. So far as they could do so they have served their purpose in promoting the construction of the highway which was to fit them for settlement, but so long as the mingled proprietorship remains or the system of rectangular survey and subdivision is adhered to they cannot be made available for settlement or industry by either the Government or the companies. By merging the whole in one common ownership and adopting a suitable system of surveys having regard to the springs and water-courses, all of which may be done with economy to the Treasury and benefit to the settlers, the Government may easily indemnify itself from the sale of what are now designated as odd and even numbered sections for the amounts proposed by this bill to be credited upon the bond claim long before the claims themselves fall due.

"Half the present minimum rate per acre is none too much to allow the companies for the lands, considering the length of time and the debt of the security held for its payment; and then this plan will permit the whole of the lands to be thrown open to pre-emption and sale at the minimum rate of $1.25 per acre.

### A GOOD EXAMPLE.

"There are, besides, some pertinent reasons why the railroad companies are entitled to be met by the representatives of the United States with magnanimity and liberality rather than with exacting harshness. Among them are the following, the Pacific railroad furnishing a conspicuous example of fair dealing of private parties with the Government:

"The companies are in no way in default. They have given valid invaluable consideration for all they received. Not only was not this great work (everywhere regarded as a colossal experiment and adventure) created in accordance with the terms agreed upon, but the Government and the people had the use of it seven years in advance of the stipulated time.

"The benefits accruing to the Treasury, aside from the consideration of public welfare, from the more rapid construction of the railroad over the more leisurely policy, when to our companies that would have been a saving of not less than $55,000,000, a sum greater than was realized on the whole of the Government bonds advanced to them, there would have been a corresponding saving to the companies from the decline in prices of materials, labor, &c., if they had consumed seven years more in construction, which sum is now represented in their indebtedness. The nation gained immensely by their prodigious efforts and expenditures. The companies lost by them.

"Second. The Government is daily and hourly reaping benefits for its use of the roads far outweighing the interest on its loan of credit. Prior to 1864 the cost of military and postal transportation west of the Missouri river exceeded $8,000,000 per annum for a scanty and uncertain service. Now a multiplied service of vastly more efficiency and safer is performed for less than $250,000. The difference between these sums is very much greater than the annual interest outlay of the Government, and is virtually a gain to the Treasury.

"Third. When the United States found it necessary, in order to encourage the opening of a great iron road across the public domain so as to connect the two oceans and to open its stores of the precious metals, to offer its assistance in lands and bonds as an inducement to such of its citizens as might be found willing to embark their time, services, and capital in its construction, there was no other thought than that the advances were to be repaid, if at all, chiefly from the use of the road, with possibly an addition from participation to the extent of one-twentieth of the net profits, in the improbable event of its success."

### THE FORM OF THE AID.

"Out of a spirit of abundant caution, and to avoid setting a dangerous precedent, this aid (which, it was supposed, would turn out to be a donation) was made in the form of a debt or bond, to be repaid currently in services, any residue to become payable at the end of thirty years.

"Few, if any, then expected any payment in money. The companies do not seek to construe the advances as gifts, but if they are to pay them in full as debts they should be relieved of the charge of receiving the bounty of the nation.

"It is due to them, among the equities to be considered in any mode of settlement, that proper notice be taken of the fact that the bonds they agreed to receive in 1862, though filled by the same names, were in reality very different things, having one-third less exchangeable value when the work was done.

"These bonds, so promised, so earned, and so shrunken in value, it is now proposed on both sides to treat as a debt to be paid according to the terms of agreement, without defalcation or discount, in money worth one-third more than was received for them, and to repay to the Treasury substantially in gold all the back interest that it has paid out for years in a depreciated paper currency. When this is done, as by the provisions of this bill, the Government will have received back every dollar it has paid out.

"There are other grievances connected with the transportation of troops, mails, and public stores, and the compensation therefor, which are incidentally sought to be remedied by this bill, the justice of which is so obvious as to need no comment.

"In conclusion, we thank the members of this committee for the courtesy extended to us, and we submit the accompanying plan, which we believe to be founded upon sound business and equitable principles, with the confidence that it will be acceptable to the committee, and, if adopted, that it will prove to be a just and final settlement of all the questions between the Government and the railroad companies. All of which is respectfully submitted."

### WHAT THE COMPANIES DID.

This letter shows that for three years the officers of the Union and Central Pacific Railroad Companies had called the attention of the Secretary of the Treasury, the proper authority, to this state of affairs; and now, in the fourth year, they came to Congress and begged that this thing might be done.

To-day the Government of the United States, through the Railroad Commission, charges that the roads are responsible. If the directors of the Central Pacific railroad had been listened to none of these complications would have arisen; but they were not heard. The directors, in the discharge of their duty in the administration of their offices, did not stop at this. The Government of the United States had refused to assist in any provision to be made for the payment of this debt at maturity.

The directors of the Central Pacific Railroad Company, after that refusal, entered an order in open board upon the minutes of their proceedings making full, complete, and ample provision for the establishment of a sinking fund and the payment of this debt. That resolution will be found in volume six of the report of the testimony taken by the Pacific Railway Commission, at page 3618. That resolution is before your committee. It recites the failure of the company and of its officers to get the United States to do anything. It recites their negligence and the attempts made to that end, and then proceeds:

### THE RESOLUTION.

"That the secretary of the company is directed to ascertain, as nearly as may be estimated, the amount of said United States subsidy bonds and the interest thereon which will remain unpaid and unliquidated at their maturity, and, after deducting the probable current repayment by one-half of the compensation for the transportation on behalf of the United States, and also the sums due and payable annually at 5 per centum of the net earnings after the completion of the whole railroad, as required by the act of 1862, to compute the sums necessary to overtake and cancel said indebtedness at the date of maturity if invested in a sinking fund, with an interest accumulation of 4 per cent. semi-annually; that thereupon the treasurer of the company be, and is hereby, authorized and required to commence such special sinking fund by the first payment hereto on or before the first of September next, and to apply like sums thereto on the first of September and March thereafter by investing them, with all accretion of interest thereon, as it shall mature, upon good and sufficient security, to the best advantage, as directed by the finance committee, to the end that such remainder of the indebtedness may be fully discharged and paid at maturity from the proceeds of said sinking fund."

It made further provisions looking to the same end. Here we have the company asking Congress to do the very thing which the company is blamed for not doing, and we have the company, after Congress had refused to do it, performing the act itself; doing, then, precisely what these gentlemen now say it ought to have done. It would have been well had the Commission thrown the blame where it deserved to rest.

### THE THURMAN ACT.

The next important step was the act of the United States abrogating and setting aside this action of the company. This was the passage of the Thurman bill. You cannot fix upon the company the responsibility for that act.

The company protested at every step against the passage of that measure and was denounced for its protest. It foresaw then what plainly is evident, that such an act could only result in disaster. It foresaw that as plainly as I now foresee that if you pass the measure submitted by this Commission the result will be a much worse disaster; but the Thurman act was pressed as one in the interests of the people, and every man who dared to suggest that it was as unwise and as foolish and as absurd as it subsequently proved to be was denounced as the corrupt friend of monopolies.

### AGAINST THE COMPANY'S PROTEST.

The Government passed that act against our protest and established what it called a sinking fund. It has taken from our company money which could have been invested and out of which millions could have been realized. It has placed the money in the Treasury of the United States, and as a result to-day it has a sinking fund in fact, because it has been fast sinking away. There are $500,000 less to-day in that fund, so far as availability is concerned, than we paid. We would have been a $1,500,000 better off if we had invested that money as we invested our other sinking funds. You forced that act upon us against our protest, and, in our judgment, to-day it is a barrier against all further action of the United States.

It altered and repealed the acts of 1862 and 1864 in express terms. It released us in express terms from all obligations to make any provision for the payment of the debt, and, as I read that act, it does extend the time of payment of the debt until it shall have been paid out of the proceeds of the money paid under the act.

Senator **Frye**: Mr. Haymond, if that be the case, when will the Government be paid?

Mr. **Haymond**: Never. So far from the fund accumulating, it is fading out of sight; but you passed the act. You forced it upon us. You declared it to be the height of wisdom. You ought not to beg out of it. I think I know something of it myself. I believe if I had a creditor within my power and should force him, against his will and against his judgment, to accept conditions which he thought unjust and unwise, I would have too much manhood to shrink from the consequences when I found he was right and I was wrong.

### DETERMINED TO RESIST.

I assert here to-day that if the Government of the United States is not bound and bound forever by that act, it will be because this railroad company relieves it from the responsibility. Whether the company will ever do that depends upon how the United States may act. If the United States refuses to deal justly and equitably by us, if the United States stands upon its bond and asks not only for the pound of flesh but the blood which will follow, we are justified in the sight of God and man in interposing any shield that we can between ourselves and attempted wrong.

Make no mistake, gentlemen. The American people have a sense of justice exceeding that of any other people, and they will in the end place the blame and responsibility where it belongs. They like open and fair dealing. You may deceive them for a time, but in the end never.

### UNPERFORMED DUTIES.

Now let us go back again for a moment, because there is much in this subject—more, I fear, than I will ever be able to get before you, considering the fact that Senators of the United States are overworked, and that your duties require you to attend to other things.

I said in the beginning that we had discharged all of our obligations. You have discharged none of yours. If you had patented to us the lands which you promised to patent, and had allowed us to sell them, we would have had the money in our treasury drawing interest, and would have had an asset which would have gone far toward extinguishing that debt.

You solemnly promised that if we would accept the contract you tendered us—if we would take your depreciated currency and build you a railroad to be used for your lawful purposes in time of war and in time of peace, that as soon as we accepted the contract and marked our lines upon the ground you would survey the lands, and that as fast as we completed sections of forty miles you would issue to us the patents for these lands.

### SURVEYS NOT MADE.

Twenty-six years have rolled their length along since you made this promise. Nearly twenty years have elapsed since we completed the last mile of that road. I point this committee to a map issued last year by the Land Department of this Government, upon which are marked all of the surveys of the United States. That map stands as a witness of this broken promise, for the Government has never even surveyed the lands. Worse than that, you have accused us of refusing to take out patents. You have permitted to go abroad, without contradiction, that for the purpose of evading taxation we have refused to take patents. We have nothing to do under the law with taking patents. You contracted with us to survey the land. You solemnly agreed with us that whenever we completed forty consecutive miles of road, at that hour and at that instant you would issue and deliver to us these patents. Instead of doing that your Land Office has surrounded the applications for patents with such difficulty and imposed upon us such burdens as to make the very grant itself worthless.

It was your duty, upon the completion of each 40 miles of that road, to bring to us the patents for that land, and there is not a court in the land, but will, if you attempt to despoil us of property, make you answer for that broken promise.

If A agrees upon the performance of a certain thing by B to convey property to him it is his duty to make that conveyance. The court will refer him to that duty, and if he neglects for a time the court will not only enforce the conveyance, but will compel him to pay damages, and if the conveyance is impossible, or if such a length of time has elapsed that it will not amount to a performance of the obligation in its spirit, then the court will compel him to answer in damages. We have attempted to comply with all the frivolous and ridiculous regulations which the Land Department of this Government has thrown around us. We were required by these acts, as amended, to pay for the surveying of this land whenever the Secretary of the Treasury Department demanded that we should do so. He never has made the demand, but we have paid for the surveys. We have received no patent in three years. We have applications pending for patents on surveyed land covering nearly a million of acres.

### UNISSUED PATENTS.

When the investigation was had in California Mr. Mills, the general land agent of the Central Pacific Company, was called as a witness and testified to all these things. The records of the Government show it. He testified, further, that it would take the Land Department of the Government, at the same rate at which it was doing business then, 160 years to examine the cases and issue the patents upon the lands that we had applied for. Of course, that is a long time to wait, but we have been very patient. We, perhaps, were willing to wait.

Since I have been in the city of Washington I see by the papers that Senator Cockrell and some of his associates have made a report in which they state that the affairs of the General Land Office have been so maladministered during the last few years that that Department of the Government has virtually ceased to exist. As reported in the newspapers the statement of that committee is that the affairs of the Department are in a chaotic condition. I suppose that means that they have been resolved into their original elements; that darkness there covers the face of the waters.

To wait 160 years for patents for a million acres of land would be a long time to wait, but even that hope which was held out to us has faded away.

### CONCLUSION.

The clock admonishes me that the time is at hand for your adjournment, although I am just beginning to enter upon this discussion. I have taken up much of your time, and yet the broad field still lies before me.

Again I beg your patient consideration, for it is not alone money, but honor and integrity are involved here. The vindication I have promised you will be full, complete, and triumphant. If it takes all summer to reach it it will be reached.

The spring and summer of our lives have been spent in this undertaking; we are now entering upon the autumn. While it is hard to rest under these accusations and humiliating to be called upon for these explanations, yet there is a compensation which always comes from the knowledge that baseless slanders in the end fail and that the triumph of truth and of justice are as certain as life or death.

When Mr. Haymond concluded the committee adjourned until Monday, March 26, 1888, when he will resume his argument.

# PACIFIC RAILROADS.

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CONTINUATION OF THE

## ARGUMENT OF CREED HAYMOND

BEFORE THE

*Senate Committee, March 26th, 1888.*

(SECOND DAY.)

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Resuming his argument, Mr. HAYMOND said:

*Mr. Chairman and Gentlemen of the Committee:* I was attempting to show you at the last meeting that while it was true in point of fact that to-day the aided line of the Central Pacific alone might not be able to discharge at maturity the whole indebtedness claimed by the Government, yet the Central Pacific Railroad Company had, through the foresight of its directors, acquired such property and so strengthened the aided line that there was no difficulty at all in the United States eventually receiving every dollar justly due, principal and interest.

I was asked by some members of the Committee to submit a bill. In answer to that I stated that after you had gone over this matter you would, in my judgment, find but very little difficulty in drawing a bill.

If this Committee could take the bills which are before it and present to Congress one which met the approval and had your indorsement, I think it would be far better than to have a bill presented by the railroad company. Of course the House bill and the bill introduced by Senator Evarts are here, and the latter in all material respects would be accepted by the company, while it gives to the Government all and even more than the Government can rightly claim.

I will not follow the order which I had outlined, for I must not press so heavily upon your time.

### ABLE TO MEET ITS OBLIGATION.

I shall endeavor to show you this morning—leaving the chronological order—that the Central Pacific Railroad Company is to-day a strong corporation; that if the Government deals with it fairly it cannot sustain loss.

I call your attention to the map before you, which is drawn on a large scale to show you the aided portions of the line and the unaided, and also the support that we have brought to the aided line, both directly and indirectly.

The original articles of association of the Central Pacific Railroad Company provided for building a railroad from Sacramento City, on the Sacramento river, across the Sierra Nevada Mountains, to the State line. The capital of that corporation was $8,000,000. The company then secured the right to build through Nevada.

All that was done before any act of Congress was passed, with a view of slowly pushing, by State, county, and city aid and such resources as it could bring to bear, a road into the wilderness territory, no one anticipating at that time that a railroad would be built from the East. None of the Iowa lines had even then reached the Missouri river.

All our people believed that the Rocky Mountains, as their name implies, would interpose as many difficulties in the way of building a railroad across them as did the Sierras.

### POWERS CONFERRED BY NATIONAL LEGISLATION.

The act of Congress of July 1, 1862, provided that the Central Pacific Railway Company might come in and share the aid given by that act with the Union Pacific. The act of 1864 and subsequent acts authorized the Central Pacific Railway Company to increase its capital stock not to exceed $100,000,000, and to build to a junction with the Union Pacific. The result was that the Central Pacific railway was completed from Sacramento across this chain of mountains, across what we then called, and what may now be properly called, the desert of Nevada, and portions of Utah, to a point within five miles of Ogden.

Although the Union Pacific did build a great many miles west of Ogden, we also paralleled their road, and subsequently, instead of laying the rails upon our line, we purchased the portion of the road which the Union Pacific had constructed to a point about fifty miles west of Ogden. This made the actual terminus of the Central Pacific railway five miles west of Ogden, although the business terminus, for the purpose of convenience, has always been at Ogden.

That left to the Union Pacific the control of all the country lying east of a line drawn north and south through the Great Salt Lake. It left us 737½ miles of road from a point near Ogden to the city of Sacramento.

The city of Sacramento was the western terminus, and the connection, no railroads having been built, was made with San Francisco by steamboats belonging to the California Steam Navigation Company.

## THE WESTERN PACIFIC.

A grant was made to the Western Pacific to connect the road, singular as it may seem, with San José. At that time San José's future prospects were not so great as now, yet it was quite a town. It had been one of the old capitals of California.

The persons who were building the Western Pacific, the corporators and directors, became involved in difficulty with some of their contractors.

Our people at once saw that no transcontinental railway could long stop at Sacramento. They anticipated that some person would build a direct line, crossing the Sacramento river at the city of Sacramento, touching the Bay of San Francisco, and thence by ferry across to the city, which would make it a short line.

### THE PURCHASE OF THE WESTERN PACIFIC RAILROAD.

When the Western Pacific people got into difficulty they proposed to sell to the Central Pacific Railroad Company, and it agreed to buy and did buy and finish the road.

But it never purchased the land grant. The original owners of the Western Pacific held the land grant, which afterwards proved to be the most valuable of all the land grants. Strange as it may now seem, at that time it was believed that the plains of the San Joaquin, which have since proved to be so fruitful, were worthless.

Our people were from the East and the West and were not acquainted with that country, which, in its nature, could be more nearly compared with Spain than perhaps any other. While the directors and owners of the Western Pacific offered that grant to us for $100,000 we refused to take it. It was in fact worth many millions.

We built that road 123 miles through to San José. We then had a continuous line of road running from San José to a point within five miles of Ogden.

From Sacramento to Ogden the country did not admit of branch lines or feeders, and in this respect it differed from the country through which the trunk line of the Union Pacific runs. The territory covered by their line was rich and fertile, and it invited the construction of profitable branches.

### ONLY METALLIC WEALTH.

The mountains of the Sierras contained no coal; its only mines were of gold. The gold in the mountains of the

Sierras was found in the gravel deposits. There were some quartz ledges, but no grand deposits similar to the silver deposits of Nevada.

Out of the mining industry there grew up a great many large villages and towns along the line of the Central Pacific road, and, the population being mainly adult males, there was a great deal of traffic and trade.

When these mines of gold were worked under improved processes whole mountains were washed down, and mining bade fair in time to destroy a great portion of the valley. Therefore steps were taken which effectually led to the stoppage of what is called hydraulic mining, and these towns along the line of the Central Pacific railroad were almost depopulated.

Splendid mines are there, but they never can be worked.

### THE FOOTHILLS.

It has been found that what we call the foothills are fitted for grape culture and fruit-growing, and large towns are now springing up resting upon this new industry, which will in time, of course, strengthen this portion of the aided line.

The finest fruit in California is raised in Newcastle, which is thirty-one miles from Sacramento.

We had no terminus in the city of San Francisco; but there was a line of railroad in private ownership running down from San Francisco to San José. The company started in at an early day to do what the Commissioners say was right in relation to the Union Pacific, to build branches in the State of California—where alone profitable branches were possible—and occupy the territory, and thus support the main line.

### THE ALAMEDA LINE ACQUIRED.

The first thing it did was to consolidate with a railroad called the San Francisco, Oakland and Alameda road, extending from a point on the line of the Western Pacific at Niles to the western shore of the Bay of San Francisco, a distance of 24.31 miles. When that road was taken into the system it was made a part of the Central Pacific road as much as though it had been constructed by that company. It then had for the first time a through line to San Francisco.

The road so taken in was not up to the standard of a transcontinental road, and large sums were spent to bring it to that standard and to extend it in the waters of the bay to a point as near as possible to San Francisco. They attempted to acquire Goat Island, which stood within a few hundred yards of the city of San Francisco, but that was before the days of long-range guns, and it was supposed that the island was necessary to the defense of the harbor of San Francisco. Of course, since then this has proved not to be true. They failed to get that island, and then ran out the end of the road westerly toward San Francisco, on trestle-work at first, but now that is filled in for a long distance—I do not know the exact distance—toward San Francisco with rock to the terminal grounds, and the finest depot we have stands at the end of that causeway.

## THE TRANSIT TO SAN FRANCISCO.

From there to San Francisco passengers are now carried on fine steam ferry-boats and landed at the foot of Market street, which is the great artery of the city, which will always be the great central point, so that the terminal advantages which the Central Pacific road now has in San Francisco can never be equaled by those of any other line. They must always stand to that city as the terminal grounds of the New York Central stand to New York city.

It is impossible that anything more valuable could be had. Our freight cars are carried across that bay upon steam ferry-boats of immense capacity. They are not unloaded until they reach our yard in the city of San Francisco south of Market street. The great sea-wall which is being built around the borders of San Francisco has not been extended far south, but they are building it now.

### IMMENSELY VALUABLE GRANTS.

South of San Francisco, on its water front, are to be the India docks, all of those great docks at which some day we expect to receive the commerce of the Indies.

The State of California in 1868, out of the tide lands belonging to the State by virtue of its sovereignty, granted to the Central and Southern Pacific railroads sixty acres near the projected docks and in what will be the commercial heart of San Francisco, where will finally be the great business terminals of these roads. It is a property of immense value.

### CALIFORNIA AND OREGON ROAD.

Congress had granted lands to aid the construction to what was known as the California and Oregon railroad, which was to leave the main line of the Central Pacific at Roseville, about eighteen miles east of Sacramento, and connect with the Oregon and California, commencing at Portland and running south, at the boundary line between Oregon and California. That road from Roseville Junction to Redding extends north through the length of the Sacramento Valley, one of the most fertile valleys in the world, much of the land of which is as rich as the land in the bottoms of the Mississippi.

Senator Dawes: Is Chico on that line?

Mr. Haymond: Yes; in that valley we never have to provide for winter, never have storms to amount to anything, and rarely ever have snow or frost; that line when it had reached about to Marysville fell into the hands of our people, was consolidated with the Central Pacific and became a part of it.

### SOUTH THROUGH THE SAN JOAQUIN VALLEY.

The Western Pacific runs southwesterly, crossing a portion of the San Joaquin Valley. From Lathrop, a station on that line, our people have constructed a line south through the San Joaquin Valley to Goshen, a distance of 146 miles. All of these lines—north, south, east, and west—are the property of the Central Pacific Railroad Company.

### THE CENTRAL PACIFIC SYSTEM AS IT NOW STANDS.

The aided line, from near Ogden to San José, is 860 miles in length. The line from Niles (a station on the Western Pacific) to San Francisco is 24 miles in length, with extensions 23 miles in length. The line from Lathrop to Goshen is 143 miles in length, and the line from Rocklin to the northern boundary line of California is 296½ miles in length, making in all 1,357 miles of railroad, 860 miles of which is aided and covered by the Government lien and 469 miles of which, together with the Oakland and San Francisco terminals, are not subject to that lien. It will be seen from this that the directors of the company have, out their own means and credit, brought into the system and made part of the Central Pacific Company's property the terminal roads which connect the system with San Francisco, the terminal grounds at Oakland and San Francisco, and in addition a trunk line extending the length of the Sacramento and San Joaquin valleys—the most fertile in the world, and destined in the near future to support the largest population per square mile in the United States.

### HARD TIMES, BUT PROSPECTS BRIGHT.

We have, of course, had hard times. We may as well speak plainly about these matters. We have, so far as profit is concerned, lost the transcontinental business. We can never make much more out of that, because there are really seven transcontinental lines; but we have built up all these lines in the valleys of California. We have the great local business which centers in San Francisco, and must always have it. The valleys of Central and Northern California are rapidly filling up. You can scarcely estimate the population which will be there in the course of fifteen or twenty years.

The arable land in those valleys exceeds by far all the land in Los Angeles, San Bernardino, and San Diego counties which is capable of cultivation. Some of it needs irrigation and some does not; but all that needs irrigation is commanded by water in abundance.

### REVENUE FROM BRANCH LINES.

Secretary Miller has been with this railroad company from its beginning, though he is in no way interested. In his judgment and integrity the people of California, who have known him from boyhood, have the utmost confidence. He is regarded as one of the most level-headed men in the employ of the Central Pacific railroad. He tells you in his testimony that the Central Pacific has seen its worst days, that while it never can make much money on the aided lines east of Sacramento; while there is no country there which, so far as we know now, can ever be developed or amount to much, yet that the branch lines which the Central has built will bear the burden.

### LATEST RETURNS.

His words have almost been vindicated, because in the month of February, the last report I have seen, the receipts of the Central Pacific Railroad Company exceeded by $800,000 their receipts for the corresponding month in last year, but the main portion of these receipts are from the non-aided lines which the wisdom of the directors added to the system.

The **Chairman**: Have you the land on each side of the road through Nevada?

Mr. **Haymond**: Yes, sir.

The **Chairman**: As I understand, that is worthless.

Mr. **Haymond**: I do not say that, because we once said California was worthless. We proposed to the Federal Government, instead of giving us alternate sections on each side of this line, because these are desert lands, to throw our grant all on one side and give it to us in one mass. Now, it might be that, if we had that land in that way and could handle it in large tracts, we could induce capital to take hold, and water might be discovered, and then the land would be as valuable as any land in the world.

The **Chairman**: But now it cannot be cultivated.

Mr. **Haymond**: No; it cannot be cultivated. A great deal of it is only grazing land. Only a few strips along the valley of the Humboldt are cultivated. The Oregon grant was made in 1868 of alternate sections on each side of the road.

The **Chairman**: That is good land?

Mr. **Haymond**: It is good land until you get to Redding, and has been a very valuable grant.

Senator **Davis**: How much was it?

### PROFITABLE ADDITION.

Mr. **Haymond**: Ten sections on each side. The point I was getting at was to show that, while it is true, as these Commissioners say, that the aided line, if sold now, would not bring enough to pay the first and second mortgages, yet that our people have so protected it and have brought into the system such valuable property that there is and will be no difficulty in your framing a bill which shall secure to the United States every dollar of the money, principal and interest, justly due.

Senator **Dawes**: How much would the system suffer of itself, without any regard to its obligations to the United States, if we should take the aided line?

### THE MAIN LINE A BURDEN.

Mr. **Haymond**: Very little. I will answer that question frankly. I am not so sure but what for all time to come the aided line will be a burden and a charge, so far as the company is concerned, but not so far as the people are concerned. It may be that that line can never earn a surplus. If it ever does there will have to be a tunnel under the Sierras to reduce grades and to avoid the expense of snow-sheds.

Senator **Davis**: Does not an immense through business come over the Union Pacific?

Mr. **Haymond**: There has been an immense through business, but that is diverted, as I will show you after awhile. Some has been diverted by the Union Pacific short line, some by the Canadian Pacific, and some by other transcontinental lines, built chiefly by Government aid.

Senator **Davis**: There is an immense business to San Francisco?

Mr. **Haymond**: Oh, yes; but the rates are very low and the business divided.

Senator **Dawes**: What is sent over the aided lines they can just as well take over the other lines?

Mr. **Haymond**: Yes, sir.

### COULD NOT PART WITH IT.

Senator **Dawes**: That is what led me to ask the question.

Mr. **Haymond**: But I do know that as long as these men live they would never permit that line to pass from under their control. They have toward that main Central Pacific line almost the affection which a father has for his children, and they have strengthened and supported it.

Senator **Butler**: I was not present when you were giving the first part of your statement. Let me ask you what is the length of that road from San Francisco to New Orleans—what is the whole length of the road?

Mr. **Haymond**: Over 2,000 miles.

Senator **Butler**: That all belongs to this company?

Mr. **Haymond**: It in fact belongs to the Southern Pacific Company.

### WHY THE SOUTHERN PACIFIC WAS BUILT.

Mr. **Haymond**: Now, if it please the committee, we have supported the Central Pacific by all these lines. Then came an act of Congress in 1871. I want to call your attention to this, because we have been severely criticised for building the Southern Pacific railroad. It has been said we built it to be a rival to the Central Pacific railroad. The truth is exactly the opposite. We were bound to build it, or the Central Pacific would have been destroyed. There never can be a question but that as a freight road the Southern Pacific is the best. It is free from snow, and we can compete successfully with that line for New York business—not for the great business of the interior, but for the New York and Southern business we can compete successfully, and more than successfully, with any other transcontinental road. It is the shortest line across the continent. By it and connecting lines the distance is less from New Orleans to Portland than by any other transcontinental line now built or which can ever be built.

### THE TEXAS PACIFIC.

In 1871 Congress passed an act chartering a road as a Pacific road, to build a line from Marshall, Texas, along the second parallel of latitude, to San Diego, in California, and to aid that road they gave double the subsidies through Arizona, New Mexico, and California in lands which had been given to the Central Pacific. They gave twenty alternate sections on each of the lines. That road fell under the control of Mr. Scott, of the Pennsylvania Central, who is now dead, but was one of the greatest railroad men of the country. If he had pushed that road through into Southern California it would have been a formidable competitor of the Central Pacific, and in hostile hands, taken in connection with the Oregon Short Line and with the Northern Pacific, it could speedily have deprived that company of all its through business, and its destruction would have been certain. Our people saw that. They owned a line of road running down from San José south. That is the Southern Pacific leading out of San Francisco, but the main stem of the road has no connection whatever with that line. There is about 100 miles of gap, so that they are operated separately.

### THE RACE TO YUMA.

The Central Pacific has a road extending in the direction of Fort Yuma 246 miles down the valley. Our people, in order to prevent the construction of the Southern Pacific road by a hostile company, which would surely have been destruction to its business, commenced to build at the end of the Central Pacific, pressed forward through Los Angeles, reached Fort Yuma, and then at——

Senator **Davis**: Was that an extension of the road down the San Joaquin Valley?

Mr. **Haymond**: Yes, sir. We ran out of San Francisco over the Central Pacific line for 200 and odd miles. We never have made the other connection, because all our resources were spent in this road. We soon got down to Yuma. Of course, we had to cross the reservation, and, of course, Mr. Scott did not want us to cross, because he was trying at that time to get an act of Congress passed to extend moneyed aid to him also.

### WHAT WAS DONE.

Senator **Butler**: They first built the road and then came and asked permission?

Mr. **Haymond**: We got across the reservation first and then begged your pardon. Then we stretched that road under the control of the Southern Pacific of Arizona across the Territory of Arizona, and then across the Territory of New Mexico under a separate corporation, making three corporations—the Southern Pacific of California, the Southern Pacific of Arizona, and the Southern Pacific of New Mexico. Thus we reached El Paso, in Texas.

Then we built a line down in Texas to Houston under the charter of the Texas road, gathering in the roads already completed—the Galveston and Harrisburg and San Antonio roads. We ran on and nearly reached the boundary line of Louisiana.

### ACQUIRING THE MORGAN SYSTEM.

Mr. Morgan, who had early seen the advantages of a well-built railroad and well-built steamers running from New Orleans, had acquired a great property there, both in terminal facilities at New Orleans and in trade which he had built up. He had built a line of road west out through the swamps. We acquired this by purchase. The directors of the Central Pacific road bought it and paid for it a very large sum of money. These roads made a through line from the city of New Orleans to the city of San Francisco—one part of it under the control of the Central Pacific down to Goshen, another part under the control of the California corporation, another part under the control of Arizona and New Mexico corporations, and the other part under the control of various Texas and Louisiana corporations.

### THE TEXAS PACIFIC LAND GRANT.

Senator **Davis**: Meanwhile what became of the grant to this Scott system?

Mr. **Haymond**: We saved that for the United States. To-day the savings are estimated very largely. It was double the grant that was made to the Central Pacific. In the future we cannot tell what its value will be, because these lands are fertile, and if water can be got on them anything in the world will grow. The Texas Pacific was never built west of a point about 100 miles east of El Paso.

### CONSOLIDATING THE SEVERAL LINES.

Numerous difficulties grew out of the fact that the lines were in separate ownership. While the present directors of the Central Pacific line controlled the Central Pacific they, of course, could control all these lines, but something might occur after their death by which the Arizona corporation or some other corporation would get out of the system and make such terms as it pleased. So we asked Congress to consolidate all these lines of road in one company like our consolidated roads. That was right in the midst of the anti-railroad excitement in California, and the Legislature of California, by a close vote in the senate, passed a resolution asking Congress not to do that thing. Then we went into the State of Kentucky and got a special charter chartering the Southern Pacific Company, not the railroad company, with a very large capital stock. The roads took that stock and became, in fact, that corporation. That corporation did not buy these roads, but it purchased all the stock in the Southern Pacific and all the stock of the Arizona companies. The corporation laws of Arizona and the corporation laws of California are the same, and the owners of the stock are the beneficial owners of the property and can control it. A California corporation as such holds merely the naked legal title to the property, so that we are virtually the owners.

### A VAST THROUGH LINE.

I explain this to you instead of saying we are the owners, because there might be a criticism of that form of expression. We had acquired all the stock in all that property clear through to New Orleans, except a few shares in one or two of the Texas companies, which amount to nothing, so that virtually the Southern Pacific Company now owns the line of road running from New Orleans through to San Francisco, with the exception of a gap of one hundred and odd miles, and that gap does not interfere at all with our operations, because we run over the Central Pacific into the city.

### SEEKING INFORMATION.

Senator **Davis**: Do the Texas corporations, the Southern Pacific corporations, and the Morgan corporation still exist?

Mr. **Haymond**: They still exist, but we are the owners of all the stock.

Senator **Davis**: Who makes the guarantee of interest of the Central Pacific?

Mr. **Haymond**: The Southern Pacific Company. That is just the point I am coming to.

Senator **Davis**: Which Southern?

Mr. **Haymond**: The Southern Pacific of Kentucky—this great corporation which owns all these roads.

Senator **Dawes**: It is a mere stockholder?

Mr. **Haymond**: It owns the stock, and besides has a leasehold interest of ninety-nine years in the road.

Senator **Dawes**: It owns all of the roads until you get to the Morgan system?

Mr. **Haymond**: And it owns the Morgan system also.

Senator **Dawes**: If the Kentucky company should dispose of all that stock, not having the legal right to it, what would the guarantee be worth?

Mr. **Haymond**: It has an immense deal of other property, and has a leasehold interest of 99 years in the road.

Senator **Dawes**: Excuse me for interrupting you, but I simply want to know whether there was any real estate in a a state of actual ownership by the Kentucky corporation.

### MANAGING MATTERS.

Mr. **Haymond**: The Southern Pacific Company had the right, under the laws of California, to lease railroads in California; so, in addition to holding the stock, it holds a lease for 99 years, which together make it the owner of the roads.

### THE LEASE OF THE SOUTHERN PACIFIC.

Senator **Dawes**: The Southern Pacific Railroad Company leased to the Kentucky corporation?

Mr. **Haymond**: Yes, sir; and made it virtually the owner. The same process was gone through with clear to New Orleans, so that the Southern Pacific not only owns the stock of these roads, and is, in fact, except perhaps as to the Louisiana corporation, the beneficial owner of the property, but it also owns a leasehold interest for ninety-nine years. I am glad you ask these questions and bring this matter out so plainly. There is much to be said and it is difficult for me to cover all the ground.

### NO SUBSIDY.

Senator **Butler**: The Southern Pacific road, we will assume for the purposes of what I am going to say, is a single corporation extending from New Orleans to San Francisco. It had no Government subsidy, had it?

Mr. **Haymond**: No, sir; except there was a land subsidy to the Southern Pacific railroad in California.

Senator **Butler**: Do you recall what liens there are upon that road?

**Mr. Haymond**: No; but they are very far below its prospective value. In my judgment, so far below present and prospective values that it amounts to nothing.

**Senator Butler**: It pays its fixed charges right along?

**Mr. Haymond**: Oh yes, sir; and its prospects are very good.

### OWNERSHIP OF THE STOCK.

**Senator Butler**: As I understand you, the Kentucky company owned a majority of all the stock in all of the lines of road?

**Mr. Haymond**: Yes, sir; they own all the stock virtually.

**Senator Butler**: They, then, are practically the owners of the property, are they?

**Mr. Haymond**: That is true.

**The Chairman**: They not only own the stock, but they have a 99-year lease?

**Mr. Haymond**: Yes, sir; of the whole line, for all practical purposes, they are the owners, and I might have used that form of expression in addressing you as a lawyer.

**Senator Butler**: Did that line ever declare any dividends on that stock?

**Mr. Haymond**: No, sir; they never declared any dividends. At first there was no considerable population along the lines; they ran through a sparsely-settled country, and for the further reason that after you build a road, as it comes from the hands of the contractor it is not in first-class order. It takes ten or fifteen years to make it a road for the purpose of operation; that has been lost sight of in the estimates that have been made.

Now, in addition to this property, the Southern Pacific owns a railroad running out of San Francisco known as the narrow-gauge road, skirting the Bay of San Francisco and running down to Santa Cruz; that is worth perhaps seven or eight million dollars; they own all that and they own a great deal of other property.

## THE CENTRAL PACIFIC LEASE.

The **Chairman**: You have given us the facts of the Southern Pacific Company leasing all the roads from New Orleans to San Francisco; have they not also leased the Central Pacific?

Mr. **Haymond**: Yes, and to that I have just come. Now, may it please the Committee, we have been criticised for doing these things, but after the road was built across the continent it did not take much foresight to see that other roads would be built, and especially when lines had been subsidized by the United States running through rich and fertile regions, with double the land grant we had, it did not take much foresight to see that there would be other roads. The Union Pacific has gathered in the northern business of the road by a line running from Ogden north, and also all of the business from Utah south through a line running south, because that was in their territory.

So that in point of fact the time came when we could not carry a pound of freight over the Central Pacific to Montana north and very little to Utah south, because the Union Pacific discriminated against us.

They would carry flour, for instance, from Chicago or any place to a point way up in Montana for less than they would take it from us to that point. In truth, we carried entire car-loads of freight for nothing from San Francisco to Ogden in order to try and get that trade back. I am not complaining of that. The Union Pacific was chartered to make money, and had a right to do it, but we foresaw that that would be the case.

Then the Union Pacific stretched out with its Oregon Short Line and reached the waters of the Pacific, so that they could, by way of water, reach even San Francisco.

### EXPECTED COMPETITION.

We knew the Northern Pacific would be completed and would take the trade we used to have. The trade of Oregon was all then taken by the Short Line. The travel used to come over the Union' Pacific and Central Pacific to San Francisco, and then went to Oregon. We lost all that by the construction of the Oregon Short Line.

Then the Northern Pacific came down to San Francisco and opened its offices, and we lost not only the trade of Oregon, Montana, and Idaho, but we actually lost the trade of some of the northern tier of the counties of California, because our road north did not reach those counties and they could get freight cheaper the other way. San Francisco was very much crippled and we were crippled in every direction.

I have already said that we built those interior lines to strengthen the aided line, and that it then became the great central point around which all our connections revolved; that every one of them has been judicious and beneficial; that they are just precisely what the Commissioners say the Union Pacific should do, just precisely what the Union Pacific claims the Government has prevented it in a great measure from doing. Having control of this line running from Ogden through to San Francisco, with a branch to the Oregon State line nearly completed, and with a line of road finished to New Orleans, in order that the main line might be protected and that these lines might be worked in harmony, we made a lease which runs for ninety-nine years.

### MAINTAINED AS A WHOLE.

When you come to deal with this question you will surely think that some steps ought to have been taken by which, when this property, as in the natural order of things it will, falls into other hands, it may still be worked as one whole.

If we had never built that Southern line, if we had not built the Southern Pacific, the Central Pacific would have lost all the trade of the South, all the trade of Southern California which comes over its line to San Francisco. Now, we made the lease to secure, as far as possible, these benefits.

Senator **Davis**: That was the lease of the Central Pacific to the Kentucky company?

Mr. **Haymond**: Yes; it was made on the 17th day of February, 1885. That lease not only brings these companies together, but it reduces the expenses of the Central Pacific. It no longer has a salaried president, no longer pays a board of directors, no longer maintains a legal department nor anything of that kind. The whole business is brought into one office, although the accounts are kept separately, just as separate as though it was a separate road, because the compensation of the Central Pacific depends, except as to $1,200,000 which is guaranteed, upon its receipts and its earnings.

The **Chairman**: Can you not read the most important parts of the lease, leaving out the rest?

### DISCUSSING THE LEASE.

Mr. **Haymond**: I was about to do that. When you come to consider this lease you will see that it is so concise as to present the exact situation clearer than the best statement I could make. The lease recites that part of the business heretofore done by the Central Pacific railroad from Ogden to the waters of the Pacific has been diverted by these various lines of road, among which are the Northern Pacific, the Atchison, Topeka and Santa Fé, and Oregon Short Line; that the Union Pacific has secured an outlet to the Pacific by the Oregon Short Line—in fact has paralleled our line of road—and therefore, instead of acting as part of a transcontinental line, as was originally contemplated, it has become a rival route. It recites that it is for the best interest of both of these companies that the Central should have an outlet to the waters of the Atlantic; that we should make a through line commencing at Ogden, touching the Pacific, and running to the waters of the Atlantic, not allowing the Central Pacific to be at the mercy of roads north and south; that itself should have an outlet to the Atlantic; that it should check encroachments on our territory by invading the territory of others and by placing ourselves in a position to say to the Union Pacific as a business proposition:

"It is not to your interest to fight us here, but you must come in and let your freight go over our line so far as it is intended for our territory." Then the lease recites the necessity of conducting these two in harmony.

The Commissioners in their report tell you that if the Southern Pacific railroad was operated as a hostile road to the Central Pacific it would impair the value of that property greatly. I state that correctly, do I not?

Commissioner LITTLER: That is correct.

Mr. HAYMOND: That vindicates, by the judgment which comes after the fact, the action of our people. In making this lease we go on, then, to lease the whole of the Central Pacific line and all its roads up to Delta, which is 105 miles south of the Oregon line, and was as far as they then had completed their work.

### THE LEASED LINES.

Senator DAWES: Were all the lateral roads leased?

Mr. HAYMOND: All the roads which they own and all the other roads which had been leased. It was provided that the Southern Pacific Company should, as a consideration for that lease, guarantee, if called upon to do so, but should at any rate pay off and discharge all the interest upon the bonded debt.

Senator DAWES: I wish you would read that part of the lease.

Mr. HAYMOND: It is very hard to state it better than the lease does, or in fewer words.

Mr. **Haymond** (reading): "The said Southern Pacific Company agrees to and with the said Central Pacific railroad that it will keep and maintain the property hereby leased in good order, condition, and repair; operate and maintain, add to and better, the same at their own expense; will pay all the taxes legally assessed against or levied thereon, and will, at the termination of this lease, return the same to said Central Pacific Railroad Company or to its successors or assigns (with the additions and betterments) in as good condition and repair as it was at the date hereof; and the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it")—the Central had leased some other roads—"of the said railroad company, excepting the obligation to pay the principal of the said railroad indebtedness known as its floating debt" (which has since been pretty much paid off), "and except the obligation to pay the principal of the indebtedness of the said road known as its bonded indebtness, now outstanding, secured by mortgage or deed of trust, or which may be hereafter incurred, under the provisions of any existing mortgage or deed of trust or of any mortgage or deed of trust hereafter made, with the consent of the Southern Pacific Company, and except the principal of all indebtedness, the payment of which has heretofore been guaranteed by the Central Pacific Company, and except the principal of the indebtedness of the said Central Pacific Railway Company, evidenced by the bonds of the United States, heretofore by the Government thereof loaned to the said Central Pacific Railway Company; that as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of the United States, loaned as aforesaid; that as to such bonds and the interest thereon the said Southern Pacific Company will discharge the annual obligations imposed upon said Central Pacific Railway Company by the existing acts of Congress, and will, during the continuance of this agreement, fully comply with the terms of and perform the duties prescribed in and discharge all the obligations imposed upon the said Central Pacific Railway Company by the act of Congress commonly known as the "Thurman act."

### THE THURMAN ACT.

Now, the substance of that was simply this, that the Southern Pacific should pay off and discharge all of the present yearly accruing indebtedness for interest and would faithfully discharge all of the obligations of the Thurman act.

Senator **Dawes**: How long was that after the Thurman act was passed?

Mr. **Haymond**: That was in 1885. The Thurman act was passed in 1878.

Senator **Dawes**: The Supreme Court held that the interest was not payable until 1898?

Mr. **Haymond**: Yes.

Senator **Dawes**: Was there any stipulation as to paying off the interest?

Mr. **Haymond**: No, sir; that is the exception. We do not pay the interest, but we perform the obligations of the Thurman act. That at least clears the Central Pacific of all annual liabilities. It is no longer to be charged with any expenses for repairs or betterments; no longer to be charged with any expenses for the payment of the interest of its debt, bonded or otherwise. It is no longer to be at any expense in complying with the Thurman act.

Senator **Dawes**: The substance of it was that the Southern Pacific agreed to carry out the Thurman act?

Mr. **Haymond**: Yes; that was its substance, so far as the Government was concerned, except the benefit which the

Government would naturally derive from the fact that the Central Pacific would under the lease have a net income of not less than $1,200,000 for ninety-nine years from the date of the lease. The lease binds the Southern Pacific Company to keep the road in order, better and maintain it, pay interest on bonded debt, discharge the obligations of the Thurman act, and perform all the other duties which the Central Pacific Company was under obligations to perform for the Government. In addition to all that, the Southern Pacific Company is to pay a certain annual rental of not less than $1,200,000; is to keep an account of all the earnings of the Central Pacific, and, if the net earnings exceed $1,200,000 pay the excess to the Central Pacific Company until it reaches $2,400,000 in addition, making in all a maximum payment of $3,600,000, if the road should earn so much. The lease specifies fully the purposes for which it was made. It provides for arbitration in case of differences, and it provides further that, in the arbitration of any dispute that may arise as to whether each party is carrying out the terms, the arbitrator shall bear in mind that the purpose of this lease was that each road might deal fairly and equitably with the other.

The Central Pacific Company has now an assured income from this lease of $1,200,000 per annum. I will show you how beneficially that lease operated in the first year. In 1884 the net earnings of this leased property were $1,996,000. In 1885, which was, perhaps, the worst year we ever had, and I hope the worst we ever will have, the net earnings were $1,438,400, which would have left the Central, under its own management, without anything.

### THE OPERATING EXPENSES

In 1884 were $8,338,000, but in 1885 only $6,308,000. The earnings over the operating expenses in 1884 were $7,658,000. In 1885, under the operations of this lease, the earnings over operating expenses were four hundred and odd thousand dollars more than in 1885, instead of being less, although the business had fallen off. With less receipts the profits were greater.

### THE CONTRACT FOR THE CONSTRUCTION OF THE ROAD FROM DELTA TO THE OREGON LINE.

When all these things had been done the line of road which runs from Roseville Junction, north, had only been completed to Delta, forty miles north of Redding. Redding stands at the north end of the Sacramento Valley, but to get from there to the Oregon line, a distance of about 140 miles, the road must be built up the cañon of the Sacramento river, which is there a small stream. I think after leaving Redding for forty miles there are only one or two places where that cañon can be reached by teams, or where you can get down into it or get out of it. From Delta the cañon still narrows and the route soon reaches a chain of mountains running east and west. There tunnels had to be built and that made heavy work. There was no considerable business along the line of the road north of Delta, and that is a fact well to consider. When we had reached Redding we had extended the line as far north as it would pay to operate or to build a line for local business.

The Oregon and California Company was chartered to build from Portland south, and when we commenced to build north we expected to meet them. That company failed and we stopped work, because to build north of Redding would be of no avail. It would not pay for local trade. There was nothing there to operate a road for. It was in the mountains. So we stopped. Mr. Villard came along and started up their road pointing south, and we started ours north again. The Oregon and California railroad (the Oregon road) went into the hands of a receiver. The Central Pacific aided line had lost the trade which once went over it to San Francisco and thence to Portland, Oregon. It had lost the trade of Southern Oregon and of the extreme northeastern counties of California. To bring this trade back to the aided line and branches of the Central Pacific railroad it was not only necessary that the line should be completed north to the boundary of California, but it was equally necessary that the Oregon road should be completed south to a junction at the State line. The Oregon road was bankrupt and in the hands of a receiver and so situated that its completion at the hands of the Oregon Company was an impossibility.

Its bonds, first and second mortgages, preferred stock and common stock, were scattered all over the world. In order to finish the Oregon road—because we could do nothing beyond the State line—and make it tributary to the Central, it was necessary, at any cost, to obtain

### CONTROL OF THE OREGON END.

Our road was finished to Delta, south, 105 miles from the State line. In a little spurt which Mr. Villard had made we had built a portion of the road north of that, but it was not completed; it was partially graded. Then we made a contract with the Pacific Improvement Company. All of these contracts have really been made between the same men. In fact no other men would have made such a contract with the Central Pacific Company and assumed the burden which these men by that contract did assume. Nobody would take a contract to build the Central Pacific road across the Sierra Nevada Mountains and to Ogden, except a few men in the start, who abandoned them because no men on earth, except the projectors, believed that it would ever be finished across those mountains. The judgment of the world was that it was impracticable. We made the contract with the Central Pacific now in question, the terms of which the Commissioners have entirely misapprehended.

I desire this Committee to bear in mind that we had a road completed to Delta, and that for forty miles that road was through the rocky cañons of the Sacramento, with nearly as heavy work as was done upon the Central Pacific's main stem.

Senator Davis: The road was heading for Portland, north, and forty miles of it it was valueless?

Mr. Haymond: Yes. We had lost the trade of Oregon. If we could make the connection with the Oregon road and bring that road into our system we would have a line to Portland. The Central Pacific made a contract with the Pacific Improvement Company that if they would construct that road from Delta north to the Oregon State line, and would repay to the Central Pacific all the money which it had paid for construction north of Delta, and would secure the absolute control of the Oregon and California road, and complete it so as to make a junction with our California and Oregon road, going north——

Senator Davis: To lap on your incompleted road?

Mr. Haymond: Yes. Would get the Southern Pacific Company to lease that road and to pay the interest upon the bonds which the Central had contracted to give us for building for ninety-nine years, and to pay a dividend of 2 per cent. upon the Central Pacific stock for ninety-nine years, which the company has contracted to give for building the road; that the Pacific Improvement Company would complete the Oregon road and would make it part of this system. I think the Commissioners did all that men could do, but they were engaged pretty well in San Francisco. They treat this agreement simply as a contract to build that road, and say that the directors of the Central Pacific have done a great wrong, when, in truth and fact, the directors of the Central Pacific, who are the Pacific Improvement Company, To carry out that contract, and it was one of the most advantageous contracts which the Central Pacific Company ever made. The Oregon and California stock was scattered everywhere and its bonds were scattered everywhere.

The majority report of the Commissioners says: "The consideration for the construction of these 103 miles of railroad and of the equipment, as stated in the contract, was 80,000 shares of the stock of the Central Pacific Railroad Company, $8,000,000, and $4,500,000 of the bonds of the Central Pacific Railroad Company, part of which bonds were issued under a mortgage of the California and Oregon railroad and part issued under a mortgage of the Central Pacific Railroad Company, dated October 1, 1886. The stock was to be delivered on the execution of the contract, the bonds as the work progressed. The stock was accordingly delivered in October, 1886. All the bonds have been delivered except $317,000. The amount received is sufficient to cover the cost of the completion of the contract. The average market value of the Central Pacific stock, taken from the actual quotations of the New York Stock Exchange during the month of October, 1886, was $48."

Now, right here, let me call your attention to the fact that the Central Pacific stock was never, like the Union Pacific, an active stock upon the market. There has probably been no time from the construction of the road down to the present day, not even when that stock was selling or quoted at any price on the market, that if one of our directors had offered 10,000 shares it would not have dropped out of sight, so that these quotations amount to nothing. You could have worked off small lots of stock, but there is a provision in the constitution of California which makes a stockholder liable for the indebtedness of the company in proportion to the shares of stock he holds, and for that reason people have never liked to touch the stock. They never have been what are called active stocks, and no large amount could be sold, as the testimony shows, at any time without breaking the market entirely. It is only worth about 25 or 27 cents.

The report goes on: "At this date the $8,000,000 of stock was worth in cash $3,840,000. The bonds paid to the Pacific Improvement Company were worth par." That is true. "They were accepted by the Central Pacific Railroad Company from the Pacific Improvement Company in payment of a loan due by them to the Central Pacific sinking fund. The actual cost, cash value, was then paid to the Pacific Improvement Company for the construction from Delta to the State line and for the equipment." See how far short they fall from properly construing this contract. In stock, $3,840,000; in bonds, $4,500,000; total, $8,340,000. That makes $8,340,000, as the Commissioners state, for the construction of 103 miles of railway, probably as heavy work as appears on any railroad in the United States. I think they thought so, too. The books of the Pacific Improvement Company, showing the actual cost of this construction and of the equipment, were examined by Mr. Stevens, and this cost, exclusive of the unfinished work, which Mr. Douty testified would not exceed the $317,000 bonds which have been retained, was $3,138,609.32. Now, of course, that makes a very bad showing. We have received $8,000,000 and we have paid out $3,138,000 to construct the road as far as it was then constructed.

The CHAIRMAN: The implication is that you gentlemen pocketed the difference.

Mr. HAYMOND: Certainly, that is the implication. See how easy it is for people to be mistaken; they have not estimated the cost at all. That was only the money expended by the Pacific Improvement Company up to that date and the estimated amount which it would take to complete it. But before

Began work on that section the Central Pacific had done a large amount of work, and very expensive work, and out of these bonds and stocks we were to pay the Central Pacific the cost of their work there, which would amount to a great many hundred thousand dollars, if not a million.

Commissioner **Littler**: Where do you find a statement of the work done by the Central Pacific?

Mr. **Haymond**: I don't know that it is in, but the contract shows it. Now, I say that it is not strange that these gentlemen make these mistakes, and with the best of intentions. What did the Central Pacific buy? The Central Pacific bought and the Pacific Improvement Company undertook—I was present at the council board of the directors day after day and week after week when Governor Stanford and all of them discussed this proposition. He said: "I am too old a man to undertake to risk my fortune in carrying out that contract," and it was with the greatest reluctance that he made it. The Pacific Improvement Company undertook to build this road for the purpose of making this connection, and to make valuable forty miles of worthless road which the Central Pacific already had. They undertook to secure control of and complete the Oregon road and to cause it to be operated with and as part of the Central Pacific system, and this undertaking was the most serious of all the undertakings in that contract. If carried out it would restore forever to the Central Pacific much of its lost trade and round out its system. They undertook that the Southern Pacific should come in and lease the road from Delta to the State line, and that the Southern Pacific for ninety-nine years should pay all the interest upon these bonds. In fact, these bonds cost the Central Pacific nothing, because for ninety-nine years, as long as that lease shall stand, the Southern Pacific pays the interest on them. The stock was then worth, they say, 48 cents, but it was only worth

30. They undertook to pay 2 per cent. upon that stock, so that not one man who held a share of Central Pacific stock before that time issued should be affected. That was in proportion and in addition to the $1,200,000 on the stock which had already been issued which the Southern Pacific had contracted to pay. In other words, it was the equivalent of 6 per cent. upon the actual value of the stock for ninety-nine years.

Now, what did it cost the Central Pacific? Not one solitary cent, except the obligation, when this property was returned to it at the end of ninety-nine years, to repay the bonds. For all that ninety-nine years the main line of the Central Pacific would have the use and benefit of that line as a support, and without cost. This contract has in all its terms been faithfully carried out, and the Central Pacific, without the expenditure of a single dollar, has received the benefits flowing from a connection with Portland and the restoration of a lost trade.

## DIVIDENDS DECLARED BY THE CENTRAL PACIFIC RAILROAD COMPANY.

It is gravely charged that the Central Pacific Railroad Company made in nineteen years dividends amounting to $34,000,000. It is asserted that this was all wrong. It is said they should have kept that money to discharge their obligations. They did make the dividends upon their stock, and to this matter I will again refer in another connection. Mr. Thurman, in his debate on the Thurman bill, says that they were to make dividends. There was no law prohibiting it. They never entered upon this hazardous enterprise for the simple and sole purpose of paying back the United States its money. The United States was getting $10 where we were getting $1 out of the enterprise. The company was making money, and it looked at that hour as if it could handle its indebtedness at maturity. I have shown you that, in the midst of their prosperity, they did come to Congress four years in succession and laid before Congress the fact that these bonds were coming due, and that there ought to be provision made for them. They were

WILLING TO MAKE PROVISION,

And when Congress refused they themselves did it. It was the Thurman act, unfortunate as it happened to be, that brought about the present state of affairs. Gentlemen of the Committee, it has been nine years since it was discovered that no interest could accrue on the money paid by the company under the Thurman act, and yet Congress has not passed any measure, simple though it would have been, to allow that fund to be invested. Congress to this day has not done that. If the Central Pacific did make the dividend to its stockholders let me ask, what has been done with the money? They have expended it all and over $200,000,000 with it, borrowed on their credit in Europe, and expended it in the construction of railroads west of the Rocky Mountains.

Senator HISCOCK: Why do you say on their credit?

Mr. HAYMOND: Because it was on their credit.

Senator HISCOCK: They got the bonds of the road?

Mr. HAYMOND: Yes; but you cannot borrow money on bonds unless behind them there is a directory which has character and standing. It was on their own credit, because they are personally liable under the laws of California for all the Southern Pacific's bonded indebtedness. They are liable in proportion to the number of shares each one of them holds, and they hold it all. It was their personal credit. The projectors of the Central Pacific commenced their career of enterprise in 1860. Very few roads in the United States that were in existence or commenced to be built at that day escaped being wrecked one way or another. This company during all its existence has performed every obligation which it undertook to perform.

Its projectors have been railroad builders and not railroad wreckers. They have given employment to industry—not plundered it by stock-jobbing. No road constructed by them has ever defaulted in meeting its obligations. No person has ever lost in any manner a dollar at their hands, nor have they ever had one they did not honestly obtain. They have developed an empire, but no broken promises have been left in their paths.

No private individual has ever doubted or questioned their credit, and it never would have been doubted either, and these questions never would have been raised, if it had not been a fact, unfortunate to them but not to the country, that the bonds and credit of the United States came from thirty-three cents on the dollar up to 40 per cent. premium, and there was no way to invest this sinking fund. We had provided

### AN AMPLE SINKING FUND,

Which would have cleared off this debt, and I have shown there will be in 1898 at least $22,000,000 in our own private sinking fund. That is a fact that the Commissioners never thought of and never considered when they said that we had been making no provision to discharge our financial obligations. The Union Pacific has nothing of the kind. We will have $22,000,000 in gold to apply on our debt, besides all of the Government sinking fund.

Now, the Congress of the United States has before it, as I see by the papers (and we may take that for true), a bill to fortify the eastern and northern coasts. I am sorry Senator Butler is not here. All the money that you can take out of the Treasury of the United States and put on your eastern and northern coasts will never defend it as these men have defended our western coast and southern frontier. I make bold to say there is not a gentleman at this table who, if the proposition was made to so completely defend the United States east and north as it is defended west and south, would haggle if the question of billions were involved in it. We have constructed now—and I say "we" because we finished that Oregon road—a line of road from Portland, Oregon, extending south through the whole length of Oregon and California to Yuma, on the Colorado river. That line runs behind a range of mountains its whole length. There are only three places on the coast, although it is as long, I believe, as from the northern part of Maine to the southern part of Georgia, at which an army could be landed at all, which would be Portland, San Francisco, and Wilmington harbor. From San Diego an army could never march in. There is a line of road running parallel to the coast, distant forty or fifty miles from it, that could never be reached by a hostile force. It is supported by three or four lines of transcontinental roads. An army stationed along these lines could be concentrated at any point on the line within thirty-six hours. San Francisco is one of the commercial cities of the world that is built upon the ocean, and with guns that will reach five or six miles its defense must depend, in the main, upon a fleet. The fortifications would, of course, support that fleet. San Francisco might fall, or might be blockaded, but as a strategic point it would be of no value, and the Pacific coast, since these days of railroads, could only be successfully blockaded by blockading the whole Atlantic coast.

There is

### NO SUCH DEFENSIVE LINE ON EARTH

As that. England proposed once to build a line around the island, but it could have been reached from a thousand places and broken. Ours can only be reached from three places. No hostile army could ever be transported, with any means of transportation now known, which could reach that line. The road then stretches along the frontier of Mexico until we get clear down to the Rio Grande, and makes what

General Sherman calls the southern picket-line of the United States.

Now, if we have used this money, it was our own. Nobody had any right to object to dividends when all our obligations were complied with. We have spent millions in the construction of these lines, which as military roads have no equal on earth. On the road from Portland, Oregon, to Roseville Junction the Government has a contract with us for all time to come to transport its armies, munitions of war, and supplies free of charge. Now, I think I have gone as far into this branch of the question as I need at present to go. When you come to investigate these matters you will find everything has been done that was possible for our directors to do to protect the Central Pacific, and thereby secure the Government of the United States. I know you are reluctant to enter upon the consideration of these questions, but the Senator from Massachusetts very properly said that in this matter of amicable adjustment and that the the United States should deal with us as one man should deal with another.

### THINGS TO CONSIDER.

If we have contracted with the United States to perform certain things for them and have performed them to the very letter; if all our subsequent efforts have been to sustain and maintain that road; if we have built thousands of miles of road, which dispenses with the necessity of fortifications, and which constitutes itself the best defense that this country could have—all these are facts for you to consider.

In other words, if we were unfortunate creditors and you were settling with us, you should do as merchants would do; you should consider the fact that we had traded with you for years and kept our obligations; that you had made great profit and we had lost all; but that is not the situation. There are no obligations which have not been fulfilled; there are none to become due for ten years.

Who dares to look ten years ahead and predict what the future will be? A war with Mexico would enable us to earn money enough on the Southern Pacific road to discharge every claim and leave us money to lend. Of course, on the other side, some calamity may overtake and destroy all these roads.

Here Mr. Haymond, for the purpose of illustration and not as a proposition, submitted, elaborated, his views presented on the first day's argument to show that while it was true the aided line was unproductive, it was also true that the directors of the company had by their individual efforts and credit built up a supporting system of roads, and that it would be an easy and simple thing, when the amount, if any, due to the United States had been ascertained, to provide for its payment, and to provide ample security without embarrassment to the road or injury to the communities through which it passes.

Mr. HAYMOND then said:

I have, may it please the committee, a few more questions to discuss, the principal one the cost of the construction of the Central Pacific road and the nature of the obstacles its projectors had to overcome. I desire to show you clearly that the methods pursued by the directors of the company in its construction were not only right, but were the only methods which could have succeeded. I desire to say a few words as to the Evarts bill now before you, and to show you that it goes to the extent, and even beyond what the Government ought in common justice to ask. I desire to say something as to the equities of this company, which have already been recognized by Congress, but the hour is near when your session for to-day must close, and I will leave these matters for consideration at your next meeting.

Appreciating, as I do, the other calls which are made upon your time, I can rightfully do no less than to thank you for the patience and kindness with which for two days you have listened to me.

The committee then adjourned until Saturday, April 7th, when Mr. Haymond will conclude his argument.

# PACIFIC RAILROADS.

CONTINUATION OF THE

## ARGUMENT OF CREED HAYMOND

BEFORE THE

*Senate Committee Saturday, April 7, 1888.*

(THIRD DAY.)

Mr. HAYMOND, in continuation of his argument, submitted the following:

If the Committee please, this is the third day that I have appeared before you to present the case of the Central Pacific road. I am not unmindful of the fact that you have been considerate in granting me so much time, and for this reason I will endeavor to conclude to-day, though when I have finished I shall feel that not one-half of what might be said in favor of the Central Pacific road and its directors has been said.

### CASE OF THE UNION AND OF THE CENTRAL COMPARED.

I have attempted to point out the differences in the status of the two transcontinental companies growing out of the nature of things. I have shown you that the main trunk line of the Union Pacific road runs through the Platte river bottoms, the garden spot of the West; that to this line the rich and fertile valleys lying to the north and south could be made tributary by branch roads.

The trunk line of the Central Pacific road I have shown you runs through a country which cannot support a heavy population, the land of which is not arable, and adjacent to which are no rich valleys which could be made tributary to that road.

The grant to the Union Pacific was of a garden; that to the Central Pacific of a desert.

The aided line of the Union Pacific road is 1,038 miles in length, while the aided line of the Central and Western Pacific combined is but 860 miles, making a difference of 170 miles in length.

The aided lines of the Union Pacific road lie chiefly in the State of Nebraska and the Territory of Wyoming. In 1880 the population of Nebraska was 122,993, while in 1885 its population was 740,645, an increase of 421 per cent.

The population of the Territory of Wyoming in 1880 was 20,789; in 1885 it was 65,000, an increase of 44,211, or 212 per cent.

The aided line of the Central Pacific road is chiefly through Nevada and Utah, the mineral wealth of which has to a great degree been exhausted and the agricultural possibilities of which are limited and remote. More than half the line, 451 miles, lies in the State of Nevada. The population of that State in 1880 was 62,266. In 1885 the population was estimated by the Secretary of State at 58,000. There is no other State or Territory in which the population has not largely increased during the last five years. In Nevada, in which our greatest mileage lies, the population alone has decreased.

The Union Pacific road had a line of level country much greater in proportion than that of the Central Pacific, and therefore the bonds issued to it did not amount to as much per mile as the bonds issued to the Central Pacific, making the indebtedness of the latter to the Government, by reason of the fact that a great proportion of its line was mountainous, much greater per mile than that of the Union Pacific.

The labor and supplies for the Union Pacific road were paid for in currency, so that no discount was lost in realizing on the bonds; hence, while the Union Pacific received nearly $600,000 less of bonds than the Central Pacific, yet it realized from the bonds received nearly $7,000,000 more in money.

The net earnings of the Central Pacific aided line were largely reduced by competing through lines. The Union Pacific suffered in like manner, but its local business, owing to the rapid settlement of the country through which it passed, held up its earnings.

In 1884 the Central Pacific aided line earned $1,000 per mile; in 1885, $1,003 per mile, while in 1884 the aided line of the Union Pacific earned $4,371 per mile, and in 1885, $4,288 per mile, while the net earnings of the Union Pacific aided line for those two years were nearly five times as great as that of the aided line of the Central Pacific.

The Union Pacific road has received five times as much as the Central Pacific road from the sale of land granted. The sales of the Union Pacific road up to last August amounted to $15,273,486, while the sales of the Central Pacific land grants amounted to but little over $3,000,000.

I have already adverted to the fact that the Union Pacific road was built in the presence of an armed force, maintained by the Government of the United States; that by reason of treaties made with the Indian tribes the expense of maintaining such a force did not fall upon the Government in the construction of the Central Pacific line. Mr. Charles King, of the United States Army, in an article published in Harper's Monthly Magazine for April, 1888, upon this topic says: "There is no place here for dissertation on the subject, but the fact remains that west of the Missouri no rod of road was surveyed, no rood of land was tilled until swept by the rifles of 'the regulars,' and as for the great railways that now span the continent and have brought the very wilderness under tribute the mile-posts of their longest are not enough in number to score the lives of our officers and men laid down in Indian battle during the years it took to build them."

In dealing with the Central Pacific road, when you come to an adjustment of accounts, this, I suggest, is a matter which should enter into the consideration. The Government sustained great expense in protecting the construction forces of the Union, but not a dollar to that end was expended by the Government on the Central line.

The Union Pacific has been favored in the matter of Government transportation. The Union Pacific has been assisted in that respect in an amount, as already shown, nearly five times as great as the assistance from the same source to the Central Pacific.

Large fields of coal have been found upon the line of the Union Pacific, but none upon the line of the Central. The cost of fuel to the Union Pacific has been largely reduced, beside the coal traffic, which result has been a great source of revenue, and always will be, to that company. So important was the happy discovery of coal upon that line that President Adams tells you that it is doubtful if the line could have been profitably worked but for that discovery. These are some of the many facts which constitute a difference between the cases of the two roads. I do not advert to them to disparage the Union Pacific. As a citizen of this country, I rejoice in the prosperity of that company, and pray it may never be less. I would not pluck a leaf from the chaplet which its bold projectors are entiled to wear, or detract from the honor of the brave men who met the dangers of the wilderness and risked all in an enterprise which has brought to my country such munificent returns.

## COSTS OF CONSTRUCTION OF THE CENTRAL PACIFIC ROAD.

In my first day's argument before this Committee, and with the purpose of setting at rest forever the charge that the directors of the company had not expended the full amount they received from the first-mortgage bonds and from the sale of the bonds of the United States in the construction of the Western and Central Pacific railroads, I showed that the Commission estimated the cost of construction at $41,000,000; that to be added to this sum was $53,000 for the rebuilding of the American river bridge and $1,200,000 for the cost of the snow-sheds, being in excess of the amount included in the estimate, making in the aggregate an actual cost, according to the estimate of the Commission, without allowing a cent for profits to the contractors, of $42,253,000.

I then showed, from the report of the Commission, that the company received from its own first-mortgage bonds and from the Government bonds the sum of $41,480,000.

Standing upon these figures the directors are entirely exculpated from the charge, so often made, that they had appropriated any of these sums to their own use.

I propose now to show that the cost of the construction of the Western and Central Pacific railroads far exceeded the sum at which the Commission placed it. The engineer of the Commission could travel over that line of road, could measure exactly the amounts of the excavations and fills, the amount of bridging and stone-work upon the line, the number of ties and pounds of rails, and fix their cost. This estimate made, (as it was) by a skilled engineer and constructor, would have been a reliable one if the road in question had been built as roads ordinarily are built. The estimate would have been a fair one if the contractor had been allowed to take his time and select the best seasons for the work and push it forward continuously from one end to the other; but such was not and could not be the case in the construction of the Central Pacific road.

I have shown you that long before any act of Congress was passed the projectors of the Central Pacific road had determined that it was practicable and had concluded to build it; had made many preliminary surveys, completed the organization of a California corporation, and had put in large sums of money and secured aid from various sources. The end which they hoped to attain in the distant future was a transcontinental line; but their immediate object was to push the road across the Sierras and draw to it the trade of the great interior, for which they could have no competitors. They were either bound to accept any act of Congress subsequently passed looking to a transcontinental line or to abandon their project entirely; so when the act of 1862 was passed they did accept it.

The Union Pacific Company, although (as it afterwards turned out) they had a much easier line to construct, could obtain subscriptions of but $2,200 in the United States, and, having made no expenditures whatever, declined the proposal which the Government held out by the act of 1862. When the act of 1864 was passed granting larger aids in lands and allowing first mortgages to be made upon the road, the Union Pacific accepted that act, and a year later commenced the construction of their road. Finding no obstacles whatever in the way, they contemplated pushing it to the eastern base of the Sierras, believing that they could reach that point before the Central Pacific road crossed the mountains.

Had they accomplished this purpose the Central Pacific line already constructed would have been worthless, because of the cost of operation and the comparatively small mileage. Hence Congress made it necessary for the Central Pacific road, in self-defense and to save what they had already invested, to push forward and acquire as much mileage as possible in order that they might share in the profits of a transcontinental road. This is a fact to which I shall allude again when I come to consider the equities; it is a fact not generally known or much understood.

Before the Union Pacific commenced work a railroad had been completed across Iowa, connecting the Missouri river at St. Joseph with the trunk lines running from the Atlantic seaboard. The Union Pacific, therefore, received all of its supplies directly from the east by rail to St. Joseph, and thence on the Missouri river by boat to Omaha.

It commenced work upon a level plain, with little more to do than to lay the superstructure upon a road which nature had graded. On the contrary, all the supplies for the Central Pacific had to be transported 17,000 miles by water, around Cape Horn to San Francisco, or at heavy charges across the Isthmus of Panama. From San Francisco they were transported up the river to Sacramento, and from there by rail, by ox teams, and upon pack-trains to the place of use.

The Union Pacific could purchase supplies and material as it desired to use them, while the Central Pacific had to purchase supplies from six to twelve months in advance; had to pay heavy freights for transportation, heavy insurance, including war risks, and at times amounting to 17 per cent. of the values.

It commenced work at the junction of the American river with the Sacramento, and was built easterly along the southern bank of the American river for 3 miles. The American river is a short river, having its source near the summit of the Sierras, and in is character a torrential stream. In 1850 it had at Sacramento well-defined banks 30 feet in height and seldom overflowed; but at the time the railroad was commenced the bed of this river had, by tailings and other debris from the mines, been filled far above its original banks. It had more than once overflowed the city of Sacramento, and several times had threatened its destruction.

The road was built upon an embankment constructed almost wholly by the company. This embankment was protected against the waters of the river by riprapping of the most extensive and costly character; so that while the road from the point of its commencement was built upon comparatively level ground, its construction was a matter of great expense.

Next came the bridge across that river, which, from the character of the stream, the depths of sand, and shifting currents, was a work of difficulty and expense. The next 4 miles of the road were comparatively level and without serious difficulties; but at Arcade, 7 miles from Sacramento, the geological foot of the mountain, the work of cuts and fills commenced, and the difficulties and cost of construction rapidly increased as the ascent of the Sierras was made. Long and high trestle-work had to be constructed at Newcastle, 31 miles from Sacramento. From there to Emigrant Gap the work was about as heavy as the average of the work on the Pennsylvania road across the Allegheny Mountains.

From Emigrant Gap to Truckee the difficulties encountered can never be described so as to be appreciated by one not conversant with that range of mountains or who has not lived among them during the months of almost constant storm. The snow usually begins to fall on the Sierras in the month of November or December, and sometimes continues, with but slight intermission, until April or May.

On the western slope the annual snow-fall will vary from 30 to 60 feet in depth, and snow has remained upon the summit to the depth of 4 feet as late as July. Rain at intervals falls upon these vast bodies of snow, and when they are reduced by the influence of the rays of the sun and the saturation of rain to the depth of 10 or 15 feet the mass ceases to be snow and becomes a body of ice, which cannot be removed except with pick and powder.

The three winters in which our people with from ten to twelve thousand men were working on these mountains were among the severest known in the history of the State. As the snow began to fall it required as many men to clear the ground as it did to do the work of excavation. As the storms progressed it became impossible to clear off the snow, and the work was done under it. Long tunnels were run through the snow to get at the rock to be excavated and at the rock tunnels to be bored. Shafts were sunk in the snow;

domes excavated under them, and in these domes the masonry necessary to be used in construction was laid, the stones being lowered through the snow shafts.

There was constant danger from the mountain avalanches; men were frequently swept away, and their remains not found until the snow melted in the summer. For miles and miles great masses of snow, drifted and compact, rested upon the cliffs near the summits of the mountains, endangering all below them, and these masses had for protection to be removed before the work could be even carried on with comparative safety.

While these storms were raging in the mountains rain deluged the foot-hills and the valleys, rendering them impassable even for teams, and many of the supplies to points which could not be reached by rail were borne upon the backs of mules. For days at a time so terrific would be those storms that not an hour's work could be done; yet the men who were risking their lives could only be retained by full payment, whether working or idle.

The Commission, in its report, does not underestimate the difficulties in this respect; but it says that the dangers were not shared by the projectors, but were only encountered by the hired men. This is a grave mistake. There was no time but what one or more of the projectors of this road encouraged by their presence the prosecution of this undertaking. Mr. Charles Crocker was nearly always present, sharing the danger. No more could this force have been maintained and organized and kept in action under such circumstances without the presence of a leader than an army could be fought without a commander.

While this work was going on in the mountains a force was pushed 40 miles ahead, to the cañons of the Truckee, and 20 miles of rails with their fastenings, and locomotives and cars sufficient for carrying on the work in that cañon were hauled through the snow over the summit to that place. The cost and expense of such transportation could only be appreciated by those who have lived in the Sierras during the winter months, and could only be justified by the necessity of the work and of the great interest which the nation had therein.

It was also deemed important to do work in the lower mountains crossed by the railroad in Utah, so that when the track reached those points there should be no delay. Men and material were transported by wagons over deserts, sometimes 40 miles without water, at immense cost. Provisions to sustain them and forage for teams were expensive beyond anything ever known in the Atlantic States. Barley and oats ranged from $200 to $300 per ton; hay, $120 per ton, and all other supplies in Utah in the same ratio.

The work in the Sierras was done before the days of high explosives or the Burleigh drill. Five hundred kegs of powder was the daily average, and its price was beyond anything ever known in the country before. There were no means in California for manufacturing railroad material. Only a few years had elapsed since there had been any considerable emigration to that State. Labor was scarce, and only obtainable at great cost. Miners, accustomed to work in the placer mines or not, as it suited them, would not undergo the discipline of railroad work. They were indifferent and independent and their labor high-priced.

At the first mining excitement many of them would abandon the work. As an illustration, 1,100 men were transported at one time to work on the eastern sections of the road, and out of 1,100 only 100 remained, the balance going to the mines newly opened at Austin, in Nevada.

Iron rails laid in the track, 100 tons per mile (including switches, side tracks, and material), cost over $140 a ton. For two locomotive engines there was paid in cost and freight $70,000. The first 10 engines purchased in a lot by the Central Pacific road cost $191,000, and the second 10 upwards of $215,000. Freight by Cape Horn to San Francisco was over $2,000 on the first locomotive. Cars were manufactured in the East, taken to pieces, brought around Cape Horn or across the Isthmus, landed at San Francisco, and carried by boat to Sacramento and there put together. Thousands of tons of rails were transported by steamship from New York to Aspinwall, and then across the Isthmus to Panama, and then shipped again to San Francisco at great expense.

An average of 11,000 men were engaged for 3 years in this mighty work upon the mountains—a force far greater than General Taylor led across the Rio Grande to Monterey and to Buena Vista; a force nearly equal in numbers to that with which General Scott swept from Vera Cruz to the city of Mexico. More work was done and more money actually expended in the construction of 150 miles of the Central Pacific road across the Sierra Nevada Mountains than would have been necessary to build the road from the eastern base of those mountains to the city of Chicago. The testimony upon this point is clear and indisputable.

From the eastern base of the Sierra Nevada Mountains, with 5,000 men, 500 miles of road were built in 10 days less than 10 months, and the work from the eastern basin to Ogden is certainly, on an average, more difficult than that from Ogden to Omaha.

When the mountain was passed the desert was encountered, and there was neither fuel nor timber. Water was scarce and, except upon the Truckee and Humboldt rivers, had to be hauled in teams for steam and for the use of the grading forces. Thousands of dollars without result were expended in well boring; tunnels were run into the mountains east of Wadsworth, small springs developed, and the water thus found was carefully husbanded and conveyed in some cases more than eight miles in pipes to the line of the road.

There was not a tree that would make a board for 500 miles of the route and no satisfactory quality of building stone. With the exception of a few acres of stunted pine and juniper trees all fuel was hauled over the Sierras. A maximum haul for ties was six hundred miles, and for rails and other materials and supplies the haul was the entire length of the Central Pacific road.

It is shown by the testimony that if this road had been constructed during the five years preceding its construction and in the manner roads are ordinarily constructed that it would not have cost more than 60 per cent. of its then cost. The principal elements of material, transportation, and labor were less; rails averaged 50 per cent. less; transportation 63 per cent. less, and every element entering into the construction of a railroad except labor was very much cheaper.

If the road had been constructed five years subsequent to the time it was, it would have cost about 75 per cent. of its present cost. Had the whole time allowed for the construction originally been used, it is not an easy problem to determine how much less it would have cost. Advantage of the markets could then have been taken, contractors would have been willing to undertake the work with a reasonable time for completion, so that they would not be required to perform any work during the winter months where the mercury freezes and in deep snow.

It is said that the directors ought to have contracted with other parties than themselves to construct this road. There was no one to contract with them. The enterprise was looked upon as wild and visionary. Mr. Davis, an experienced railroad builder, never at any time connected with the Central Pacific road, and who at the time of its construction was engaged in freighting across the mountains, in his testimony before the Commission (vol. 6, p. 3620) describes some of the difficulties in the way, and winds up by saying that "we thought the men who were constructing the Pacific railroad were a little off—yes, that is what we all thought." From his testimony the statements made as to the average snowfall, the character of the work, the price of supplies, and the nature of the country can be verified. He also says, judging from his own experience, that railroads can be built now for one-half what it cost to construct them at the time the Central Pacific was built. He states that he built the South Pacific Coast railroad in 1876, and that it, although a narrow-gauge road, cost $50,000 per mile "after all the new appliances and past experiences were taken advantage of. I say new appliances; I mean the use of high explosives and of the Burleigh drills, the better settlement of the country, the better supply of labor, and the lower prices of rails, ties, and all other materials."

It is proper to state that the South Pacific Coast railroad for a part of its distance crosses the Santa Cruz Mountains, but no considerable amount of snow ever falls upon the line.

It is impossible but to faintly portray the conditions under which the Central Pacific railroad was built; but I have stated facts enough, which are more than confirmed by the evidence before this Committee, to put at rest forever the charge that the directors of the Central Pacific Railroad Company had paid too much for its construction. The Pacific Railroad Commission, report of which is before you for consideration, estimates the cost of the road and equipment from Sacramento to Ogden, 737½ miles, at $36,000,000. This is less than $49,000 per mile.

There was paid in cash for this work by the Central Pacific Company (Commissioners' Report, p. 81) $33,985,496; in bonds of the company and of the United States, $3,000,000.

They estimate the cost of the Western Pacific road, 149 miles, at $5,000,000—about $33,000 per mile. There was paid in bonds for this work $4,874,000. These estimates are found on page 81 of the Report.

It will be seen from this that the Commissioners place the actual cost of construction—the cost of contractors—at $41,000,000. To this there is to be added the excess of cost of snow-sheds, not taken into the above estimate, $1,200,000; cost of rebuilding the American river bridge, $53,000, making the cost, according to the Commissioners' estimates, $42,253,000, while the company receives from the sale of its own bonds and the Government bonds $41,480,000. Mr. Commissioner Pattison (p. 221 of the Report) estimates that the present cost of reproducing the Central Pacific road would be $34,500,000.

Now, the testimony before the Commission shows that the present cost of reproducing the Central Pacific road would be at the very least 40 per cent. less than it actually cost at the time of construction. No one will contend that Mr. Commissioner Pattison was at all prejudiced in favor of the company. No one will contend that if it would cost $34,500,000 to reproduce the Central Pacific road that it did not cost over $50,000,000 to build it in the first place. Besides, there is an element which is not at all considered by Commissioner Pattison, and that is the element of permanency.

A railroad as it comes from the hands of a contractor, built according to the most approved plans and specifications, is not and never can be, for practical purposes, a completed road. For four or five years, in order to bring it up to the standard of an operating road, a large expense must be incurred. This expense, of course, depends in a great measure upon the character of the country through which the road passes, but I have not found in any work on railroad engineering that it has ever in any case been estimated at less than fifteen per cent. of the original cost.

Forty-seven and five-tenths miles of road east of Promontory was purchased from the Union Pacific. That company had paralleled our line for that distance.

After President Lincoln fixed the point of junction five miles west of Ogden the Central Pacific abandoned the line which it had graded and purchased $47\frac{5}{10}$ miles of the line constructed by the Union Pacific road, so that for this distance really double the amount of work was done in grading which was necessary.

It will be seen that the Commissioners' estimated cost is but $49,000 per mile. We paid to the Union Pacific Company for $47\frac{5}{10}$ miles of road $2,840,000, without equipment, and this would be about $60,000 per mile, and it was the value put upon it by an engineer selected by prominent railroad men selected by both companies to fix the actual value.

The Commissioners, as we have seen, valued the whole line at less than $49,000 per mile. The rails alone cost $14,300 per mile. The equipment at that time, together with the water supply, station-houses, and workshops, could not have cost less than $15,000 per mile, while the snow-sheds cost over $2,000,000—an average of $2,900 per mile for the whole distance—thus accounting for $31,200 a mile of the estimated cost, leaving a little over $17,000 per mile to pay for the grading, bridges, tunnels, ties, bolts, plates, and all the other things that enter into the superstructure of the road. This work could not be done to-day, with all the modern appliances, for anything like $17,000 per mile.

While Mr. Davis, an experienced railroad builder, tells you that since 1870 he built a narrow-gauge road in California, with a mountain division on it, and the actual cost in cash of the road and equipment was over $50,000 per mile, on the other hand the testimony of the engineers, officers, and employés of the road shows that when it was finally completed it had actually cost from two to three million dollars more than the aggregate proceeds of all the bonds issued by the company and of the bonds loaned to it by the United States and all the money paid in by the subscribers to the stock, and all State and county aids; and that this is true is supported by the estimate made by Lieutenant Stevens and heretofore referred to by me, in which he estimated the cost of the construction of the road in 1856, from the Missouri river to Benicia, California, at $115,000,000.

### SNOW-SHEDS.

To further illustrate the difficulty of constructing a road over the Sierra Nevada Mountains and of the cost thereof, I may with profit call your attention to the fact that snow-sheds cost over $2,000,000, these sheds alone making it possible to operate the road during the winter months. The word "snow-sheds" does not convey to the Eastern mind a knowledge of what those structures are. In general they are a mass of the heaviest timbers, braced and cross-braced in every direction. Some portions of them had to be built and are maintained strong enough to support snow-drifts from 60 to 100 feet in depth, while other portions are built on the exact slope of the mountain sides, so that the avalanche, with the trees and stones which accompany it in its descent, may sweep over the structure without endangering the trains which are moving under its protection. Solid as these structures are, so terrible are the mountain storms that drifting snows will penetrate and fill them. Sixteen first-class locomotives are frequently necessary to use behind a single snow-plow in the work of clearing them. The cost of a single mile of this character of so-called sheds has exceeded $170,000. Very few who have traveled over the road can appreciate what these structures are. They are described by the chief engineer of the road in his report, dated July 1, 1869 (p. 3477, vol. 6, of the testimony), and of them Mr. Arthur Brown, who constructed them, says (vol. 5, p. 2582):

> "The galleries are built along the side of the mountains, where the slope of the roof conforms with that of the mountain, so the snow can pass over easily. Some of these galleries run back to the slope of the mountain several hundred feet from the center line of the road, and in other places massive masonry walls were built across ravines to prevent the snow from striking the sheds at right angles. The snow-sheds and galleries were finished in the fall of 1869. In them was used 65,000,000 feet, board measure, of timber and 900 tons of bolts and spikes, &c. The total length of sheds and galleries when finished was about 37 miles, at a cost of over $2,000,000.

I have called your attention to this matter because these snow-sheds constitute part of the road, and they illustrate with striking force the difficulties which were encountered.

## TUNNEL UNDER THE SIERRAS.

It would be of great advantage to and would largely increase the value of the aided line of the Central Pacific if a tunnel were constructed under the Sierra Nevada Mountains and the road thrown below the deep snow belt. Such a tunnel is practicable. It would begin at Soda Springs, on the American river, run under the summit at a depth of 1,000 feet, and end at Donner Lake, on the eastern side of the mountain. The grade would be reduced 14 per cent., and snow-sheds and their attendant expenses would be avoided. The cost of operation would be in every respect most materially reduced. This tunnel would be 10 miles in length, and to-day could be built for $5,000,000. In perfecting any plan of settlement allowances should be made for such a work. Its construction would give great additional value to the line, and in the judgment of some distinguished railroad operators would reduce the expense of operating the road to a figure which would admit of steady profits out of the receipts of the aided line.

## THE EQUITIES CONSIDERED.

The Central Pacific Railroad Company maintains that there are certain equities in its favor growing out of the construction of the road, the benefits received by the Government therefrom, and out of the injuries which it has sustained by reason of affirmative governmental action, as well as by reason of the failure of the United States to perform the conditions on its part to be performed under the contract created by the acts of July, 1862, and July, 1864, and the assent of the company thereto.

Much as may have been said in the past twenty years about the power of railroad corporations in influencing the legislation of the country, it is nevertheless true in point of fact that during that twenty years the interests of railroad companies have received less favorable consideration at the hands of the Legislatures, State and National, than any other great interest of the country. Indeed, it would be difficult to recall during the whole of that time any legislation upon the subject which was not directed, either wisely or not, against the supposed interests of railroad corporations. Popular excitements upon the subject have swept over the country, and men holding public positions have in many cases bent to the storm, and legislation, State and National, both proposed and actually carried into effect, has been the result of a hostility to railroad companies.

We are now told that the equities which we assert are not such as the courts of the country would enforce if they existed between private individuals. This is in part true and in part untrue. Some of these equities rest upon moral grounds alone, while others rest upon grounds cognizable in the courts of the country and which would be enforced by the courts if they existed between individuals.

The Pacific Railroad Commission gave but little attention to these equitable considerations, and never sought affirmatively for the facts which would establish them. It was only when the evidence supporting them was brought to their attention that they seemed to have entered into their consideration. Indeed, the Commissioners say as to some of them they have no legal foundation and do not constitute legal claims enforceable as such in courts of law, and this is true; but the Commissioners seem to have lost sight of the fact that Congress passed, and on March 3, 1887, the President approved, an act which recognized that, as between the Government and the Central Pacific railroad, equities did exist which must in justice be considered before any adjustment of differences should finally be made. Neither Congress nor the President asked for the opinion of the Commission as to how far these equities should be recognized in the adjustment. They directed the Commissioners to inquire into and report upon the facts which lay at the foundation of the company's claim. We must assume that the inquiry was not to be made to gratify an idle curiosity. We must, if possible, give force and effect to every part of a solemn act of Congress. We cannot do that in respect to the act in question unless we conclude that Congress desired the information in relation to the equities because it recognized the existence of such and wished to deal honestly in the premises.

## COST PER ANNUM OF GOVERNMENT TRANSPORTATION BETWEEN 1850 AND THE COMPLETION OF THE PACIFIC ROADS AND COST SINCE.

The act of March 3, 1887, charged the Pacific Railroad Commission to ascertain and report the average cost per annum of Government transportation in the region now traversed by the Pacific railroads between the year 1850 and the completion of the roads, and also the average cost per annum since such completion.

The Commission report, at page 126, that before the completion of the Pacific railways the cost of transportation was very many times greater than it now is, and refer to the reports of the War Department, to the evidence of Kimball, and to the evidence found in the record before you. The testimony upon this point of inquiry was very voluminous, but satisfactory and unanswerable, resting (as it did in most cases) upon documentary evidence. From it it appears that the average cost per annum for Government transportation in the regions mentioned, between the year 1850 and the date of the completion of the roads, exceeded $8,000,000; that since their completion, from 1870 to 1885, inclusive, the total cost of Government transportation over the Central and Union Pacific roads has been less than $21,000,000, making an average annual cost of but $1,310,000.

From 1870 to 1885, inclusive, the transportation of Government freight over the Central Pacific amounted to

$1,098,000. The cost of the same service at the rates paid before 1870 would have been $10,721,000.

From 1870 to 1885, inclusive, the cost of transportation over the Union Pacific railroad was $4,642,000. The cost of the same service, at rates prior to 1870, would have been $50,440,000.

The saving to the Government for those sixteen years, from 1870 to 1885, inclusive, in transportation, by reason of the completion of the Central and Union Pacific, even if we consider that the business would have been no greater in the sixteen years in question than in the preceding years, amounts to the enormous sum of $55,430,000. That these figures are correct appears not only from the testimony in the record, but from the history of the Pacific railroads compiled by Colonel O. M. Poe, of the United States engineers, and printed in the last report made by General Sherman as General of the Army. Colonel Poe's estimate, after a thorough review of the subject, is that the relative cost of railway and wagon transportation is as 1 to 10. The report of Colonel S. L. Brown, division of regular supplies, contained in the Report of the Secretary of War for 1865 (volume 1, page 251), shows that the cost of transportation of grain alone used by the army on the plains in 1865 was over $3,000,000.

The saving in passenger transportation by the construction of the railroad was in a greater ratio than in the case of freight; but, applying to such transportation the same proportional cost as is applied to the movement of freight, it will be found that it cost the Government of the United States for transportation of troops and passengers from 1870 to 1885, inclusive, on the Central and Union Pacific railroads, $4,616,000. In the absence of railroads the same service would have cost over $49,000,000 making a saving in this item to the Government of the United States of $44,384,000.

Aggregating the two items of saving to the Government by the completion of these roads, the amount in sixteen years was, in round numbers, $100,000,000.

A still greater saving cannot be estimated in money. Indian wars have been practically ended by the construction of these roads. The amounts formerly paid for the support of troops engaged in the Indian wars varied from time to time, but the enormous expenditure in that behalf is apparent from a report of the Pacific Railroad Committee of the Senate, submitted February 19, 1869, in which it is stated that Indian wars for the thirty-seven years then next past had cost the nation 20,000 lives and $750,000,000, or about $20,000,000 a year. In the years 1864 and 1865 the Quartermaster's Department spent $28,574,000 for military services against the Indians. The report of the Secretary of War for 1865–1866 (vol. 1, p. 113), states the expense for the year ending June 30, 1865, of transportation of military stores alone westward across the plains at $6,388,000. Using this last amount as representing the annual cost of freight transportation which the Government would have been required to pay from 1869 to 1885 had not the railroads been built, and the result is as follows: The expense of transportation for sixteen years would have been $102,221,702. The charges made by the railroad company for freight transportation during the same interval amounted to $5,740,753, showing a saving to the Government of $96,480,949.

The annual amount paid for carrying the mails across the plains before the completion of the railroad was $1,750,000. The distance carried was 1,095 miles, and the average daily weight was 1,000 pounds, being at the rate of $1,598 per mile per annum. During this time the heaviest portions of the mails were transported via Panama. For the sixteen and a half years commencing January 1, 1870, and ending December 31, 1885, the total amount allowed to the Central and Union Pacific roads for the transportation of United States mails was but $10,606,507, or an annual average of $642,818. The average daily weight of the mails carried on the Central Pacific steadily increased from 5,308 pounds in 1870 to 18,754 pounds daily in 1885. On the Union Pacific the average daily weight increased from 6,376 pounds in 1870 to 23,990 pounds in 1885. It will readily be seen that on the transportation of mails alone, without taking into the estimate the amount paid for transportation by way of the Isthmus, the amount paid was $39,364,273.

Summing up the three items of transportation of freight, troops, and mails the result to January, 1886, shows the transportation charges of the Union and Central Pacific to have been for all these purposes, $20,963,312.22; that the same services, at the rates paid prior to the construction of the Pacific roads, would have been $160,311,054.47, making a saving to the United States in sixteen years of the enormous sum of $139,347,741.25.

Had the Pacific Railway Commission answered the question submitted to them by the act of Congress, that answer must have been that the savings amounted to about $140,000,000.

I have cited the acts of Congress of 1862–1864 and the debates when those acts were under consideration to prove—and they do prove—that the United States never expected its loan, principal or interest, to be repaid by the companies in cash. These acts and the debates prove that at the time the roads were constructed the Government was, in round numbers, expending annually for transportation on the plains about $8,000,000. Congress provided that in the future this transportation should be done by the railroad companies, and the debates show that although the rates might be reduced, yet the volume of business, including the volume of the mails, would increase, so that the compensation would never fall below $7,500,000 per annum. Congress provided that of this amount one-half should be retained by the Government and the other half should go into the treasury of the company. Had this been done, as in equity the United States was bound to do, then the account at this date would have stood as follows, exclusive of the five per cent. and exclusive of interest—both large items:

| | |
|---|---|
| Charges for Government transportation for 20 years | $150,000,000 |
| Of which the companies would have received | 75,000,000 |
| And the United States | 75,000,000 |
| At the maturity of the Government bonds the amount in the United States Treasury would have been, inclusive of interest, computed without stops | 213,750,000 |

or more than enough to discharge the Government bonds, while the companies would have received and had for their own use a sum equal in amount. While the Government has had all the service it has not given the compensation, and hence the debt will not be extinguished in coin. It has in equity been extinguished by services. The Government has received all it bargained for, and more, too. The Government has, as the result of its contracts with these companies, kept in its Treasury more than 140,000,000 of dollars which it would otherwise have been compelled to expend for an inferior service. The Government has, to all intents and purposes, received that amount from these companies, while it has withheld from them 75,000,000 of dollars which, in conscience, it should have paid. This saving of $140,000,000 is exclusive of all indirect benefits which accrued to the Government and to the people. It represents actual cash alone. All these millions are in the Government Treasury, where other millions from the same source will be going as long as the Pacific road shall exist, and the territory through which it passes shall be the home of American citizens. The companies are the only losers. Had the contract between the Government and the companies been carried out as both parties understood it at the time it was made, not only would the debt have been paid as it was intended by Congress it should be paid, but the companies would have been enriched. The contract has not been so carried out, but the result is that by the failure of the Government to perform its part of this contract it has made a great gain and the companies have suffered a corresponding loss. If this does not constitute a matter for consideration in a court of conscience, then have the works upon equity jurisprudence ceased to be authority and the long line of opinions of eminent chancellors fallen into desuetude.

### ADDITIONAL FACILITIES.

The act of Congress of March 3, 1887, required the Commissioners to inquire into and report what additional facilities had been furnished to the Government and the people by the said roads. The Commission simply say that—

> The completion of these railroads has been a great benefit to the Government and all the people of the United States. The increased wealth, the increased comfort, both to the rich and the poor, by the construction of these and other transcontinental roads, cannot be overestimated. (Commissioners' Report, pp. 126, 127.)

But the Commission say (page 127) that—

> It is elsewhere declared that, in its judgment, this circumstance has no bearing whatever on the obligation of the bond-aided roads to repay their debts to the Government, and it sees no occasion for further discussion of a matter conceded by every one.

This is a most remarkable statement. In the first place, the Commission were not called upon, nor was it made their duty, to express any opinion whatever on this subject. They were directed to ascertain and report what the additional facilities were. Congress recognized the fact that this question did have considerable bearing upon the obligations of the aided roads. Congress recognized, what the Commissioners seem to have overlooked, that by various acts of the Government the business which these roads had the right to expect had been diverted from them; that by reason of various acts of Congress the values of their property had shrunk; that it was only fair to inquire what benefits the people and the Government had received in order that when Congress came to consider the whole matter it might determine whether or not, in justice and in equity, the United States should bear part of the loss.

That these additional facilities were very great cannot be questioned. Before the completion of these roads the only practical means of communication were via the Isthmus of Panama and via Cape Horn. The trip via Panama required thirty days, and that via Cape Horn required from four to six months. The completion of the transcontinental roads brought San Francisco to within six days of New York. Such was the result as to the seaport cities.

As to the interior—the country between the Missouri and the Sierra Nevadas—there was, prior to the completion of the roads, no means of communication except by mule trains or by wagons. All troops and all supplies for the military posts and for the Indans had to be transported in that manner. The additional facilities furnished by the completion of these roads have been the means by which that wilderness was redeemed and its wealth added to the resources of the Union. Congress was but just in recognizing the fact that this was proper matter for consideration in the final adjustment.

### COST OF CONSTRUCTION OF SAID ROADS AS COMPARED WITH WHAT THEY WOULD HAVE COST FIVE YEARS PRECEDING OR FIVE YEARS SUBSEQUENT.

The Commission were charged by the act of Congress with the duty of ascertaining and reporting the comparative cost of the construction of said roads with what they would have cost with the prices of labor and commodities prevailing five years preceding or five years subsequent to the completion of the roads. In response to this question the Commission say, at page 127:

It may be stated generally that the cost at the time of actual construction exceeded the amount which it would have cost to build these railroads at either of the periods named.

The Commission further say, at page 127:

This is especially true in regard to the Central Pacific railroad.

The testimony taken by the Commission and now before you contains estimates made by competent disinterested persons, as well as estimates made by parties interested. The very lowest estimate made is that the roads cost not less than 40 per cent. more than they would have cost had they been built five years earlier or five years later, while the highest estimates make the difference fully one-half. Mr. Davis, a disinterested party, a railroad builder of experience, testifies that the Central Pacific road could now be built for one-half what it cost to construct it at the time it was built.

## BENEFIT TO THE UNITED STATES BY SPEEDY COMPLETION.

The Commissioners were also directed to inquire whether or not the Pacific railroad was completed in less time than was allowed by law; and, if so, in how much less time, and if the United States was benefited thereby. They found (page 127) that the roads were completed about seven years before the time required by law, and that the early completion of the roads was doubtless of great benefit to the United States. It is conclusively shown in the testimony that the United States was directly benefited in cash to the extent of $47,000,000, and that up to January, 1886, had been benefited in the enormous sum of $140,000,000.

## MONEY WITHHELD FROM THE COMPANIES.

The Commission was also charged to inquire and report if the United States have contracts with branch roads, controlled by either of said Pacific roads, for carrying United States mails; and, if so, what service has been performed by them, what money, if any, has been paid for such service, and what remains due and unpaid.

The Committee report (p. 128) that there are large amounts due, and refer Congress to a communication from the office of the auditor of the Treasury for the Post Office Department, dated November 9, 1887. I have already discussed this proposition in part, and only refer to it again because it not only constitutes an equity in favor of the company which, if it existed between private parties, would be enforceable by the courts, but also to prove the assertion made in the beginning, that the United States had not complied with its obligations to these companies. The Commission very justly say (p. 128) that, after the determination by the Court of Claims and the Supreme Court of the United States in the case of the Denver Pacific Railroad Company *vs.* The United States, it was the duty of the Government to pay over without delay to the respective companies all moneys due for services rendered by leased or auxiliary roads belonging to the bond-aided roads.

So far as the lines which were leased by the Central Pacific railroad are concerned, a remarkable state of facts exists. The Government has refused to pay for any services rendered since 1883. Up to March, 1885, it based its refusal upon the grounds that those lines had been leased by the Central Pacific Railroad Company. In March, 1885, the Central ceased to lease these lines. The Government then refused to pay, because the Central Pacific had not leased them. On December 1, 1886, the balance due the company and then and now unpaid was, exclusive of interest, $1,853,323.15, and the interest to that date amounted to $111,199. Both amounts have since been largely increased.

### REFUSAL OF THE GOVERNMENT TO ISSUE PATENTS.

I have already at length adverted to the fact that the Government obligated itself to survey the granted lands as soon as the line of the railroad should be marked upon the ground, and to deliver patents as fast as each section was completed, and to the fact that the Government has not to this date surveyed the lands or issued patents; but I refer to these matters here again, because this failure and refusal constitute not only an equity which, if it existed between individuals, would be enforced in the courts, but also to sustain the assertion, made in the beginning, that the Government had failed to comply with its obligations.

### THE CENTRAL PACIFIC HAS COMPLIED WITH ALL ITS OBLIGATIONS TO THE GOVERNMENT, AND THIS IS AN EQUITABLE CONSIDERATION.

I stated in my first day's argument that the Central Pacific road had complied with every obligation to the Government of the United States. This very question was one of the questions which under the act of 1887 the Pacific Railroad Commission were to consider, and they did consider it and answered it at page 107, and their answer is full and complete, that the Central Pacific railroad has complied with every obligation imposed upon it by any act of Congress. They say that in some minor respects, which they specify, the Union Pacific road and its branches may not have done so. Every officer of the Government who has ever been called upon to examine into the affairs of the Central Pacific road has made the same report. Mr. Anderson, one of the Commissioners, stated in the presence of this Committee, in response to a question of mine, that the Central Pacific Company had complied with all of its obligations to the Government.

I may safely leave this question with these remarks and refer you to the reports which have become a part of the records of the nation, and to which the directors of the company may with just pride point.

## THE UNITED STATES HAS NOT PERFORMED ITS OBLIGATIONS, AND OF THIS EQUITY WILL TAKE NOTICE.

I have already shown you that the United States has neglected for twenty years to survey or patent the lands which it granted. It never issued to the company a bond at the time at which that bond was earned and was due. By reason of this neglect the company was compelled to borrow money to satisfy contracts made on the faith that the bonds would be delivered according to the terms of the contract.

Prior to 1869 it had paid, for interest on the sums necessarily borrowed because of the failure of the United States to deliver the bonds at the time they were earned, $426,000. It is clearly entitled to a return of this sum, with interest at, at least, 6 per cent. per annum from the time it was paid. The amount to this date would be nearly one million dollars.

The Government of the United States, by the acts of 1862 and 1864, virtually agreed with the Union and Central Pacific roads to give them the transportation of its supplies, materials, and munitions of war, and expressly agreed to pay a reasonable compensation for such services not higher than that charged to other persons. The Government has not complied with either of these conditions. It has diverted the transportation of troops, munitions of war, and of supplies to other lines, and even to a water route; to lines and routes in direct competition with the aided road. The testimony before you shows that the Government has made such diversions when the aided lines would have transported the supplies and materials at a less sum than was paid to rival lines.

The Government has not given reasonable compensation for the performance of service, for a reasonable compensation would bear some just relation to what it would have cost the Government to transport troops and supplies without these railroads. As to the mails: Before the completion of these roads the United States paid $1,800,000 per annum for the transportation of mails from the Missouri river to California on stage coaches, not exceeding an average of 1,000 pounds daily, while it has never paid to the Union Pacific and Central Pacific roads as high a sum as $1,000,000, although those companies furnished for the transportation of mails from one to two twenty-ton cars with each train and has transported free the messengers in charge.

The Government has compelled us to carry the mails at the same price per pound which it pays for the transportation of mails between New York and Washington city, over a level road. We pay for coal an average of over $8 a ton for our locomotives. The Pennsylvania Railroad Company, operating a line between New York and this city, gets its coal for $2 a ton. Its road is level; ours is mountainous.

It cannot be denied that the Union and Central Pacific roads are justly entitled to a larger compensation than is allowed to the Atlantic coast lines. All of the trunk lines east of the Missouri river recognize the fact that transportation on the lines west of the Missouri river is more expensive per pound or per mile than the cost of such transportation on the lines east of the Missouri river, and they all make an allowance averaging from 30 to 80 per cent. in favor of the transcontinental lines west of the Missouri.

The United States during the past year has not only diverted its business from the Union Pacific and Central Pacific roads, but has given some business to the Canadian Pacific, a rival road running through a foreign territory, subsidized to an amount greater than that of any American road. It has also provided, in order to enable that road to compete directly with the Union Pacific and the Central

Pacific roads, that it may take goods in bond from one port of the United States through the British possessions over its lines and deliver them in bond to another port in the United States. These are some few of the violations of the letter and spirit on the part of the Government of the contracts entered into between the United States and the Central Pacific road under the acts of 1862 and 1864; and they could be increased almost without number. On the other hand, the company points to the fact that it has kept and performed every obligation that it entered into with the Government.

### DIVERTED TRAFFIC.

At the time the act of 1862 was passed it was not supposed for a moment that another transcontinental line would for many years be built, but in a little more than two years after an act was passed granting to the Northern Pacific Railroad Company lands double both in quantity and value to the lands granted to the Central Pacific road, and year after year additional grants were made to other competitive lines.

It is true none of these lines were built until after the Central Pacific and the Union Pacific had demonstrated the practicability of a transcontinental road, and that it might be successful as a commercial enterprise. Then competing lines were pushed rapidly forward and several have since been completed. None of those lines would have been built to this day but for the aid extended to them by the United States.

It is true there was no exclusive grant to the Union Pacific and the Central Pacific roads. There was no promise that the Government would not extend aid to other lines. It is true (although the policy is often assailed) that it was a wise policy to encourage by land grants the building of transcontinental lines. The Government and the people have reaped a rich harvest from the plant, but the earning capacity of the aided line of the Central Pacific road has been almost totally destroyed.

This may not constitute a claim for compensation valid in law, but when we come to consider the fact that the Central Pacific road was a pioneer; that it has performed faithfully all its obligations to the Government; that it has saved to it millions upon millions of dollars; that by reason of the construction of competing lines, aided by the Government, its property has shrunk in value, there is a question in morals whether part of that shrinkage ought not to be borne by the party to the contract whose act caused it and who has derived such vast benefits from that act. It is a question in morals whether a government dealing with its citizens should not, under these circumstances, gravely consider whether the other party is not entitled to some compensation.

But the very least that can be said is that the Government, which has done these things for its own benefit, should not now censure us because of the unforeseen and unhappy results. The traffic diverted from the Central Pacific road up to August, 1887, as shown by the testimony before you, amounts to over $17,000,000, but the loss is a constant factor and one which will be with us every day for all time to come.

### CHARGES AGAINST THE COMPANY COMPLETELY CONFUTED BY THE RECORD. THE LOST BOOKS OF THE CONTRACT AND FINANCE COMPANY.

The Contract and Finance Company was the California corporation which constructed parts of the Central Pacific railroad. It ceased business many years ago and ceased its existence, having been dissolved under the laws of that State. Some of its books have been lost or mislaid, and upon this fact alone and against all the evidence adduced the Commission gravely charge that these books were destroyed for the purpose of covering up its dealings with the Central Pacific Company. These lost books had long since ceased to be of any value—with the thousands of other books connected with the various corporations in which our people were interested—they had been moved from place to place time and time again, and to one who has any knowledge of such affairs the only wonder is that more books and papers were not lost. Every living account on the lost books had been transferred to and appear upon books now in existence. *Every item on the lost books affecting in any manner whatever the Central Pacific or its affairs appears in the minutest detail upon the books of the Central Pacific.* From the books of the Central Pacific Railroad Company, Mr. Stephens, the accountant of the Pacific Railroad Commission, has reproduced the lost books of the Contract and Finance Company, and his work appears in full in volume six of the testimony taken before the Commission. Mr. Stephens swears that the books of the Central Pacific Company have been truly kept and that on them from the beginning appears all the transactions of that company. He swears that the books of the Central Pacific have never been altered in the least. If all the transactions of the Contract and Finance Company with the Central Pacific Company appeared upon the books of latter company to the minutest detail it is clear that no one connected with the latter company could have any interest in the destruction of the books of the former. In investigating the Sioux City Company it appeared that books relating to that company and which, unlike the lost books of the Contract and Finance Company, could not be produced had been "lost, mislaid, or sold for old paper." On page 120 of the Report of the Pacific Railroad Commission also appears the fact "that all the vouchers relating to the transactions of the Central Branch, Union Pacific Railroad Company, from 1876 to 1880, are missing;" also "that all the vouchers of the Sioux City and Pacific Railroad Company, from 1864 to 1880, are missing, with the exception of a few cash vouchers." The Commission pass all this by without comment. The truth I suspect to be that the Pacific Railway Commission came to California impressed with the idea that the methods of the Central Pacific were the methods of the "Wall-street wrecker," and were so surprised at discovering their mistake at being compelled to report favorably on all main points that they seized upon the "story of lost books" to break their fall from error to truth. I say this in all kindness. This is a weakness from which the greatest and the best cannot always free themselves.

### THE REFUSAL OF GOVERNOR STANFORD, PRESIDENT OF THE CENTRAL PACIFIC COMPANY, TO ANSWER CERTAIN QUESTIONS PROPOUNDED BY THE CHAIRMAN OF THE PACIFIC RAILROAD COMMISSION.

The Pacific Railroad Commission in its report seems to regret that President Stanford did not fully answer certain questions propounded to him by that Commission.

The Commission seems to regret that the courts of the United States have determined that this is a government of laws, founded on the traditions and consecrated by the blood of our race, instead of being a government resting upon the theories and traditions of the Latin races.

I say "seems to regret," for it is incomprehensible to me that any lawyer trained in the jurisprudence of English-speaking peoples should ever for a moment have believed that any American court would hold that it was the right of a creditor, on his own motion and without an appeal to the Judicial, one of the co-ordinate branches of our Government, to enter upon a forced investigation of his creditor's ability to pay; to invade his house; to question his servants as to his expenditures; to inquire and compel him to answer whether he might have lived cheaper, and whether at some time he had or had not indulged his wife or daughter in a new dress at the expense of his general assets.

I had thought—if my faith was not well founded, blame not me, but the fathers—that the very essence of our form of Government was in the distribution of its powers between three co-ordinate but independent branches—the Executive, Legislative, and Judicial—and that neither, with safety to the Republic nor to the institutions of which the Republic was the guardian, could be invaded by the other.

The pages of the history of our race may be searched in vain to find a modern statute enacted by the legislative body of any English-speaking people clothing a commission with the powers which the act of 1887 gave to this Commission.

This Commission could have met at any time or place and, without a hearing, could, so far as the law which created it provided for, have pronounced its judgment.

The Commission properly describes itself when one member, in the presence of the other and without objection, declares (vol. V of Testimony, page 2743): "We have found it utterly impossible to be governed by the rules of evidence in conducting this examination. We take all sorts of statements—hearsay and everything else."

The Commission is properly described in a report made to the Senate of the United States on the 25th day of February, 1887, by Senators J. L. Pugh, Richard Coke, George G. Vest, and J. Z. George, of the Judiciary Committee of that body, on a bill conferring kindred but more limited powers even on a judge of the United States court.

These able and distinguished Senators say:

"What the Constitution forbids to be answered it equally forbids to be asked; what it forbids to be asked it forbids shall be obtained by force and through irresponsible power.

"THE BILL IS NOT IMPOTENT AND HARMLESS.

"But the bill is not even entitled to the defense of being entirely impotent and harmless. Impotent it is for all the purposes of good and orderly government, but it has extraordinary vigor for evil. It establishes an unwarranted Federal espionage over matters confided exclusively to the jurisdiction of the States. It invites and encourages irresponsible and discontented persons to subject the conduct of their neighbors, their fellow-citizens, to an investigation and scrutiny by a tribunal before which these persons thus slandered, thus maliciously accused, have no opportunity of appearing, either by themselves or counsel, or of summoning witnesses, or cross-examining those who speak against them. It is true the tribunal has no power to render judgment against them which will affect their lives, their liberty, or their property, but it has the power, in an *ex parte*, inquisitorial way, of giving official form and body and substance to accusations which there has been no opportunity to meet; to destroy character and to blacken the names of citizens who are not heard in their own defense; to stamp as genuine and true slanders and libels; to give currency to blackguardism and perjury. It is true it accomplishes nothing in the way of enactments against personal rights, but, like a thief, it stealthily surveys the ground of future operations with the view of taking advantage of a more favorable opportunity for outrage and wrong.

"Considering the tendency of this bill, its usurpation of a jurisdiction over private and personal rights, reserved to the States for their security and protection; considering also its capacity as a vehicle of calumny and slander, and its tendency to destroy the respect and confidence of the people in constitutional guarantees and official justice, it may be well to denounce it as no common or insignificant violation of the Constitution.

"It destroys the whole scheme of the Constitution; it does not enter the vestibule merely and deface or destroy some slight ornament, but it saps and undermines the foundations of the temple itself.

### "THE BILL UNCONSTITUTIONAL IN ITS MEANS AS WELL AS IN ITS ENDS.

"But the bill is still further objectionable, in that it seeks to attain *unconstitutional ends* by *unconstitutional means*. It was probably fit that this work of espionage, this inquisition into the conduct of persons over whom we have no jurisdiction, this usurped function to try citizens in their absence, to condemn without hearing, to circulate and give support to slander and calumny, should be prosecuted by a perversion to the work of injustice and wrong of the powers of that department which was more especially dedicated by the Constitution to the administration of right and justice. It would be a terrible but just retribution for our infidelity to the Constitution that if that great charter, for mere party advantage, is to be destroyed, the rights of the States subverted, the rights of citizens to be trodden down, that the instrument selected for these wicked ends should be that especial organism in our system to whose virtue and intelligence were committed the protection and preservation of all these which this bill appoints it to destroy."

Could they, in more apt language, have portrayed the inquisitorial powers conferred by the act of 1887 upon the Pacific Railroad Commission—a body unknown to the laws and traditions of the American people.

Lord High Steward Jeffreys' answer to the Bishops of London descriptive of the powers of the "High Commission" established by James II was: "This court does not proceed upon written allegation; its proceedings are summary and by word of mouth; no fixed mode of procedure, no rules of evidence govern its movements," is the same description which the Pacific Railroad Commissioners give of the Commission of which they were members. The "High Commission" of James II dared not to attempt to enforce its powers by an appeal to the English courts, although it knew the courts had been "packed." The Pacific Railway Commission with more temerity tried that experiment and failed. It may be asked why the Central Pacific Railroad Company permitted any examination to be made. The answer is that its directors knew that the severest scrutiny would reveal nothing affecting the reputation of the company or the directory. It was a mistake. The doors should have been closed upon this Commission. An American citizen always makes a mistake when, for mere temporary advantage to himself, he submits to an invasion of the rights which lay at the foundation of free government. These rights are not his to barter away, and at "all times and at all places" he should stand for them at every hazard to himself. If such an error ever can be justified it can be in the case of these directors. In committing this error they hoped right would be the result, forgetting "that court-martials were organized to convict." The opinion of the circuit court which, when called upon to enforce an answer to questions which Mr. Stanford as a witness declined to answer, shows, as does the testimony before you, that the witness had fully answered as to what the expenditures in question were made for, and that he only refused to disclose the names of the persons through whose instrumentality the expenditures had been made, and this not because in relation to any of the expenditures asked about he might if he recalled the facts not give the names, but because there were persons about whom he might be asked that policy would dictate a refusal, and therefore as to all these expenditures he would be silent, stating generally that none of them had been made for unlawful purposes; that all had been satisfactorily accounted for to the company, and that none of them had been considered when the percentage due to the Government was to be ascertained. This expenditure on general vouchers amounted to but an insignificant sum when compared with more than four hundred millions of expenditures on specific and unquestioned vouchers; that they had been made in payment of large rates of interest when the company was hard pressed for money and when it had to be obtained at any price, but the facts had to be concealed or the credit of the company would have been impaired if the situation had been made public; that they had been made in part as secret-service expenditures are made, not only by all business men, but by the Government. That to make public the names would destroy the purposes and in many instances jeopardize the safety of the agent.

To illustrate: Hundreds of miles of the road run through sparsely-inhabited sections and are open to the depredations of highwaymen, and the surest way to protect life and property was to engage desperate men who were willing to take the risk of becoming seeming accomplices, and if they could not prevent could at least give information which would lead to detection, and thus to prevention, in the future. To have named these men would have been to doom them to certain death. Many of these expenditures were made through the law department, and full explanations of these were offered (as appears from the record), but the Commission did not avail itself of the offer.

Scarce was the Central Pacific road under way before investigations were begun, and from that hour to this all of its workings have been under the light thrown upon it by these investigations. The directors have never had anything to conceal, except those things which it was necessary to the success of every business operation should be concealed. Its books, its papers, and its vouchers have been examined and re-examined until they have almost been defaced.

For two months before the arrival of the present Commission every department in the service of the company was devoted to preparing the information which the Commissioners desired to have, and this to the exclusion of almost all other business. The courts, committees of State Legislatures, committees of boards of supervisors, and Federal officers have been engaged in these investigations. Railroad commissioners, some of them men of the highest standing and reputation, to whom no one would impute an evil thought or design, had investigated these books and vouchers and had adjusted all of the accounts with the Government. All reported that the books were fairly and honestly kept, and that all sums due to the United States had been paid over. When this Commission arrived every facility was offered for the examination of the books and accounts and the taking of testimony. No objection was made; no obstacle was placed in the way of their attaining the object for which the Commission was created. The Government of the United States itself places a large secret-service fund at the disposal of the president. There is no kind of business carried on in which some expenditures are not made and some transactions had, which if made public, could but result in the defeat of the object sought to be attained. It was not discovered by the Commission, but it had always been known, that the president and other officers of the Central Pacific Railroad Company had expended money upon what were called general vouchers. By this I mean vouchers which did not contain the specific items. Some of the railroad commissioners have thrown these vouchers out in the accounting with the United States as to the net profits, but this was wrong, and the company was entitled to a credit for them, for all of these expenditures had been passed upon by the company and approved and ratified by its stockholders, and this was the best voucher the officer could have. If all these expenditures should be rejected in the settlement with the Government and thrown out the difference due to the Government would scarcely be appreciable. It was proposed to inquire into these expenditures, to have the president of the company take up a voucher amounting to $170,000, made years ago, and which had not been charged against the Government, and account for each dollar. Questions in this line of inquiry and directed to specific individuals were the only ones to which answers were refused. In everything else the affairs of the company were laid open. Had it been possible, as it was not, for the president of the company to charge his mind through a long series of years with every item of expenditure made under the head of general expenses, yet every man who has any knowledge of business affairs would have justified him in declining to state facts which in no manner concerned the Government.

I have been asked how a bill such as the act of 1887 passed Congress. The answer is plain and in nowise reflects on that overworked body. In the multitude of bills presented many escape close scrutiny. It is sure that it never would have passed had the attention of either of the Senators who made the report which I have referred to been called to its provisions. It became, in form, a law. The investigation was had. Out of the evil has come good, because it afforded the first opportunity for complete vindication which has been offered to the directory of the Central Pacific Railroad Company.

### THE PRESIDENT'S MESSAGE.

The President, in transmitting the report of the Pacific Railway Commission to Congress, quotes from a brief filed by counsel for that company an extract which to him seemed to place the company in the position of having asserted, as to the aided line, that it made no difference what the company did with the bonds which it might issue. The extract cited had no relation whatever to the aided lines. It asserted in substance a truth—that if A built a railroad on his own credit or from his own funds it could make no difference to any one else for what amount he mortgaged that road or what he did with the money he had borrowed. Counsel who submitted that brief may not have made his meaning so clear that the President, in the multitude of other duties cast upon him, might not mistake the intended application.

### DISCRIMINATION BETWEEN AIDED AND NON-AIDED ROADS.

The Commission were charged to inquire into this. They say, at page 114 of their report, that there has been no such discrimination on the part of the Central Pacific Railroad Company.

## CONSTRUCTIVE MILEAGE.

It has been charged that by allowing constructive mileage to branch lines a discrimination had been made against the aided lines. The Commissioners upon this topic (Report, page 114), say:

> "The Commission has already expressed its opinion on the subject of constructive mileage, and does not deem it necessary to say anything further with reference thereto. In its judgment there has never been 'a diversion of earnings of aided roads to less productive branches, through constructive mileage allowances or average mileage allowances, between aided and non-aided roads or parts of roads.'
>
> "All of the witnesses who were practical railroad men and had any knowledge on the subject, who were examined by the Commission, have united in declaring that the system of constructive mileage is fair and usual and is a just and reasonable method of determining, as between a parent road and its branches, the proper distribution of earnings, part of which pertain to the main line and part to the branch. In some way or another, if branch roads are to be operated in connection with the main line, they must be reimbursed for the increased cost produced by the terminal expenses, the shortness of the haul, and the fact that the business they do is less than that done by the main line. The universal application of this principle has, in the judgment of the Commission, placed it beyond the domain of discussion."

## THE POSITION OF THE CENTRAL PACIFIC ON CONSTRUCTIVE MILEAGE.

As it is truly said by the Commission, it has been a universal custom of railroads throughout the United States to allow branch lines what is known as constructive mileage. If the transportation over the main line was 300 miles and the transportation over the branch line was 150 miles it has been usual to divide the amount received for transportation over the whole road equally between the two lines, and this because of the fact that the expense of receiving and handling lots of freight picked up along the branch line and of handling it as it dropped along the branch line is considerable, while the main line has nothing to do except to haul the loaded car through to its destination. We allowed for a time constructive mileage to the branch lines not owned by the Central Pacific railroad, but which were feeders to it. It was charged that we were thus diminishing the receipts of the aided line and reducing its ability to discharge its obligations to the Government.

The Commissioner of Railroads objected to this constructive mileage, and rather than be involved in difficulty with the United States upon the subject we several years ago abandoned it, thus imposing a burden upon the branch lines which they ought not to bear and giving a benefit to the trunk line which it ought not to receive. The Union Pacific did not concede this point and the sacrifices made by us in this respect have not been appreciated.

### BOOKS OF THE AIDED LINES CORRECTLY KEPT.

On this point the Commissioners find (Report, pp. 113, 114) "that in their judgment the books of the companies are so kept as to show the net earnings of the aided portion. As matter of fact the Commissioner of Railroads has stated and settled these earnings for many years past and has had no difficulty in ascertaining their amount."

And the Commissioners further report (*Ib.*, p. 114) "that there is no money due or owing to the United States because of mistaken erroneous accounts, reports, or settlements made by said" roads. The only amounts which the Commissioners find due and owing are from the United States to the roads, and which the Commissioners say should be promptly paid.

## TRUST FUNDS INTACT.

The Commissioners report that all these funds are intact and that none of them have been diverted. (Report, p. 119.)

## RELATION OF THE ROADS TO THE COMMUNITY.

The Commission was charged to inquire into and report upon the relations of the railroads to the interests of the communities through which they pass.

The Commission, in response, says that it has "taken a vast amount of evidence for the purpose of ascertaining the sentiment of the communities which are served by the bond-aided roads. In the judgment of the Commission, all of these companies have fairly kept their obligations to these communities in the discharge of the duty of maintaining their railroads and of carrying their freight with regularity and their passengers with safety. The only instance of complaints of train service and insufficient equipment was made to the Commission at Leavenworth, in regard to the use of mixed freight and passenger trains, and to the detention of freight by reason of imperfect connections. The general character of the terminal and station accommodations is reasonably good. At many points it is first class. The engine-houses and machine shops at Omaha were found to be insufficient and in poor condition. Complaint was also made at Ogden that the depot buildings and accommodations were utterly inadequate to accommodate the large traffic, and that a promise to erect a new depot had been made and disregarded. In the judgment of the Commission, the operation of the bond-aided roads, as far as train service, accommodations, and facilities are concerned, has been such as to give satisfaction to the communities, with the exceptions enumerated."

The coming of the Commission to San Francisco was announced in advance and information asked. As I remember the testimony, but one man (Mr. Strong) came forward to complain. His testimony, as he afterwards admitted, was founded on an entire misapprehension of facts. His complaint was not in the end against us, but against his agent, to whom he had intrusted his affairs. With this agent we had years before adjusted all matters in dispute, but the agent, to say the least, had not notified his principal. When Mr. Strong learned these facts, like the honorable man he is, he exculpated us. Another remarkable fact in this connection is that the Commission had from its creation been the recipient of anonymous letters making complaints against railroad companies. We thought some of these might be directed against the Central, and inquired of the Commission, near the close of its sitting, whether this was so. The response, and it appears upon the record of the Commission, was that it had received no letters affecting our interest. Considering the immense business we do, the large number of men in our service, it is indeed remarkable that such should be our relations with our patrons that there was none to complain.

### ANTAGONISTIC LOCAL OR STATE LEGISLATION.

The Commission were also directed to inquire if either of the Pacific Railroad Companies had been embarrassed and its earning capacity impaired by antagonistic local or State legislation. The Commission state (p. 127) that—

> "It is of the opinion that these roads have been embarrassed by the frequency with which bills intending to affect them have been introduced in the Legislatures of States and Territories through which they ran. Many of these bills contained provisions which, if adopted, would have been ruinous to the railroads. Very frequently the persons introducing such bills failed to realize the effect which their passage would produce. The constant threat of adoption of such measures has been a source of embarrassment to all

the bond-aided companies, and has forced them to protect themselves by frequent and constant attendance before committees of the Legislatures."

## THE CONSTRUCTION COMPANIES AND THEIR RELATIONS TO THE CENTRAL PACIFIC ROAD.

The principal portion of the Central Pacific road as far east as the State line was contracted for by Charles Crocker & Co. and constructed by them. Mr. Crocker was not at the time a director of the Central Pacific road, but this fact is of minor importance. The road, from the State line to Promontory, was constructed by the Contract and Finance Company, a corporation organized under the laws of the State of California for construction purposes.

The testimony shows that it was impossible for the projectors of the road to convince moneyed men that it was a business operation, and that outside of its little group of projectors few, if any, believed the road would ever be completed.

In California against its construction was arrayed the interest of the Overland Stage Company, the Overland Telegraph Company, the California Steam Navigation Company, the Pacific Mail Company, and many other powerful moneyed interests centering in San Francisco, all of which would be affected seriously by the completion of a transcontinental road; but little stock was subscribed outside of that taken by its projectors. Under the laws of the State of California the stockholders were liable for all debts contracted by the company. This, taken in connection with the doubtful character of the enterprise, and with the further fact that at that time money on the Pacific coast was worth from 2 to 3 per cent. per month, militated against the enterprise.

The projectors under their contract with the Government pushed the road along until nearly all of the funds which they could control were used up. They reached the point at which they tell you they were willing to give up the road if by so doing they could secure its completion. They formed the Contract and Finance Company, a construction company, and offered its stock in the money markets of the world, but it was rejected at every point. No amount of importunities, no offer of great advantages, as the testimony shows, would induce any of the leading capitalists of the Pacific coast or in the East to take an interest in the company and furnish the balance of the money necessary for the construction of the road. Its projectors almost discouraged, and finding that its success depended alone upon them, gave up these efforts and returned to the work. The persons constituting the Contract and Finance Company, or represented in it, were substantially the same persons who constituted the Central Pacific road. There were a few shares of stock in the Contract and Finance Company not held by them, and there were a few shares of stock of the Central Pacific road not owned by them.

It is claimed that, the directors of each corporation being substantially the same, they had no right to contract with each other. The complete answer to this would be that there was no one else on earth who would contract with them. They had hawked the contract through the money markets of the world and had failed. The Pacific Railroad Commission criticises severely the fact that the contracting parties on each side were the same. The mere statement of this fact ought to be an answer to the criticism, for certainly there is no rule of law or of ethics which prevents a man from making a contract with himself if he wishes so to do. The Commissioners entirely misapprehended the situation of affairs when they invoked and applied the principle that the agent of the principal has no right to contract with himself about the business of the principal without his consent.

But this misapprehension comes from the fact that the Commission did not properly apprehend the nature of those things which in California are called corporations. There never existed in the State of California a "corporation" as that term is understood by common-law lawyers. The Legislature of the State of California never created a private corporation and never had the power so to do. Under general laws of the State of California private corporations may be formed for any purpose for which individuals may lawfully associate themselves together. No further act of the Government is necessary for the formation of these so-called corporations. They are formed by the voluntary acts of the persons composing them, and the right to form them is common to every person. They exercise no franchises; upon them are conferred no privileges which a private individual may not exercise or which the law does not concede to him.

Senator HISCOCK has asked how is this in respect to the right of eminent domain.

The reply is that in California the question of corporation or no corporation does not in the least figure when the right of eminent domain is to be exercised. Eminent domain is the right of the State to take public property for private use. This right in California has this limitation, that the property cannot be taken without just compensation first made. The laws of California provide that every person who desires to build a railroad, to construct water works, or to do a thousand and one things which are in the nature of public uses, is an agent of the State, and may as such invoke the power.

At common law the corporation holds the title to the property. Our so-called California corporations hold the naked, legal title, the whole equitable or beneficial interest being in the stockholders. The legal title, for purposes of convenience alone, is held by the corporate entity; but the stockholders own the property, and their shares of stock are but evidences of their interest therein.

An unbroken line of California decisions sustains this view, and about it there can be no question. Therefore, when A, B, C, and D, composing the Central Pacific Company, dealt with themselves A, B, C, and D, composing the Contract and Finance Company, the act was no more unlawful than if the same parties had dealt with themselves in their individual capacity.

The Contract and Finance Company undertook with the railroad company to build the road and did do it. To all intents and purposes the acts of the Contract and Finance Company were the acts of the Central Pacific road. While it is no longer contended that the Contract and Finance Company received a greater sum from the railroad company than it cost to build the road, yet it is said they did receive from the railroad company over fifty million dollars of stock and divided it among its shareholders. It is unfortunate that this was done, not because it was wrong, but because it has subjected the parties to criticism and requires explanation whenever it is considered by those who do not understand the nature of the California corporations and who do not know that no change whatever was made in the relations of the two companies to each other or of their stockholders by reason of the act.

The reason why stock was issued is found in the testimony in the case. You have already seen with what reluctance capital was invested in these roads. The Central Pacific road was authorized to issue its first-mortgage bonds, and when they were issued every step had to be taken to insure their validity—not only every step which was necessary to insure their validity, but every step which the attorneys of great banking houses, who were to be their purchasers, held to be necessary.

There was and is in the laws of the State of California a provision that a mortgage made by a railroad corporation upon the corporate property shall not exceed in amount the capital stock of the company. In other words, if the capital stock of the company was fixed at one hundred million of dollars the mortgage should not exceed one hundred million dollars. This provision clearly refers to the amount of capital stock as fixed in the certificate of incorporation; but when these bonds were to be issued the question was raised whether that provision did not apply to the amount of capital stock subscribed, and the directors of the Central Pacific were led to believe, or at least the attorneys of the bankers thought it was safer to construe the law, that the "amount of capital stock" referred to the amount of the stock subscribed.

That this construction was incorrect I have not the slightest doubt, but for this reason, and this reason alone, the subscribing capital stock was kept up even with the Government lien and the mortgage bonds. There was no need of Stanford, Crocker, Huntington, and Hopkins contracting with themselves to issue stock. They owned substantially all of the stock of the Central Pacific road subscribed for and were the owners of the property. They could at any day have stepped into the office of the secretary of the company and subscribed for the balance unsubscribed for, and there was no law in the State of California and no Federal law applying to that corporation which required any payment to be made upon that stock if such subscription had been made.

True, there is a provision that before a railroad company can file its articles of incorporation at least one thousand dollars a mile must be subscribed, and that 10 per cent. of that amount must be paid in; but after that is done the whole capital stock may be subscribed for by any individual without paying a cent upon it. They gained no legal advantage whatever by the issuance of this additional stock. Instead of having fifteen or twenty thousand shares of stock, as the case might be, representing the entire value of the stock, they had a greater number. It was precisely the same as if a man purchasing a piece of real estate should take, instead of one deed conveying the whole of it, one hundred deeds conveying each a one one-hundredth undivided part. The result was the same.

But it has been said that this increase of stock increased their dividends. Not so. No dividends could be made under the laws of California except from profits, and no dividends were ever made, as this testimony shows, except from profits. If there was a million dollars of profit to be divided it mattered not whether there were one hundred or one million shares of stock, the sum total of the dividend would be precisely the same in either case; the amount per share only would be greater.

Governor Stanford in his statement before you very aptly said: "If the stock of the Central Pacific road were to-day gathered in, and all excepting ten shares destroyed, it would not make any difference to the Government or to anybody in the world except to the stockholders themselves." He might have gone further and said that if all the shares of stock now issued and outstanding were in the hands of ten persons, holding them in equal proportions, and all were destroyed, and but ten shares issued in their place—one to each of the holders—the result would be precisely the same; or, in other words, if ten men own all the shares of stock in a California corporation, then it does not matter, for any purpose whatever, whether there be ten shares or ten million shares. The political code of California declares that the shares of stock stand for and represent the property; in other words, they are but evidences of title.

And right here I might ask who was it contemplated should own the Central road? Why, certainly the men who constructed it; the men who put all they had into it—who borrowed upon their credit and upon the security of the property money enough to construct it. They are the ones. The stockholders could dissolve that California corporation to-morrow, and hold, own, and operate that road as tenants in common, not with as much convenience, perhaps, as it is operated through the medium of a corporation, but with the same legal effect. At common law when a corporation ceased to exist its property vested in the sovereign. Under the laws of the State of California when a corporation ceases to exist its property, subject to the payment of the debts of the corporation, vests in its stockholders. The legal title as well as the equitable title vests in the stockholders.

### THE COMPANY WAS NOT RICH WHEN THE ROAD WAS COMPLETED.

It has been said that the promoters of the Central Pacific road were wealthy when the Central Pacific road was completed from Sacramento to the connection near Ogden. If this were true, who could complain? If they had failed to complete the road they would, it is true, have been losers, but the Government would have lost more. If the pioneer line had failed, the vast domain between the Missouri and the Sierras would in all probability have still been in the possession of the savage. None of the thousands of miles of road which runs through that territory would now be in existence. Their success meant the Government's success, and none could justly complain if the men who braved all and risked all had been sharers in results which followed. But what is the truth in this respect. When the junction was made and the road finally completed these men had expended all their means, all the aids granted, and were more than three millions of dollars in debt, for which they were personally liable. They had given nearly nine years of their time in the service. What had they? They had a road to Ogden—the aided line—subject to liens securing the Government and first-mortgage bonds and over three millions of other indebtedness. Representing their equity in this road they held all the stock, but this stock was not then worth nor could it have been sold for one-third enough to discharge the $3,000,000 of unsecured indebtedness They had this stock, their indomitable will, their credit, and their faith in the ultimate success of the enterprise. Of all these assets their credit alone was available, and that alone bridged the chasm of bankruptcy open before them. The world believed they were rich and they were silent. The stock represented their interest in the aided line and no more. It had no commercial value. They could neither sell it nor pledge it as security. A witness truly states "that at the time this aided line was consolidated" with other and more valuable lines "there was no one who would touch a share of the Central Pacific stock if he had to pay anything for it. (Testimony, volume 5, page 2394.)

After the consolidations, after various paying branches had been built on the credit of the directors and brought into the system, the Crocker Brothers sold all their stock, and with it went, without extra charge, all their interest in all branch lines and other enterprises, at thirteen cents on the dollar, to their associates, and on credit at that. Later his associates had to return this stock, because they were unable to carry it. Still later Huntington, Hopkins, and the Crocker Brothers offered on the market all the stock they held—a controlling interest in the roads aided and non-aided lines, carrying with it their interest in all other enterprises in which the associates were engaged, for twenty cents on the dollar, and no one would buy. It was not until about 1880 that the stock had a marketable value, but it then represented, not the aided lines, but all the valuable property, branch lines and terminals, which the directors had brought in and which constituted, on the basis of its earnings, two-thirds of the value of the whole system. It was out of these properties which the directors had created and not out of the aided line that two-thirds of the $34,000,000 of dividends declared were earned. The stock representing all these properties is to-day worth, in the markets of the world, but $16,200,000, and is only worth this because the destinies of the company are controlled by men who have built more miles of railroad than any other association of men have ever built, and have never failed. Eliminate their reputation and credit and this stock would to-day be of no more value than the stock which they earned in the construction of the aided lines. So true is this that if it were known that the directors of this company had put their own stock on the market there would be no market. Well did Commissioner Anderson speak when he said before a committee of this Congress that to take the aided line out of the hands of the present directors would be to destroy it. This was a deserved tribute, both to their ability and integrity. This faith is shared alike by bondholders and stockholders. This is a capital more secure than money itself. It can never be lost but by the act and consent of the owner.

### DIVIDENDS MADE BY THE CENTRAL PACIFIC ROAD.

I have said something upon this topic before, but in another connection.

It appears from the testimony, and it is true, that from the time of its incorporation down to the present date the Central Pacific road has declared dividends amounting to about $34,000,000. This action has been severely criticised because, it is said, the company should have saved that money to meet its obligations. If this is a correct proposition very few dividends would ever be made by railroad companies, for very few railroad companies ever expect to pay their bonded debts. It represents in part construction and is considered a permanent investment, to be renewed from time to time.

Were the men who risked their lives and their fortunes, who were individually and personally responsible for the twenty-odd million dollars borrowed from private parties and put into that road, never to receive any benefit from it? The United States has received directly benefits amounting to more than hundreds of millions, while its constructors and their assigns have received but $34,000,000. The Government has received this benefit on an investment of $27,000,000—on an investment which is to be returned to it with interest and which is secured by lien on the property. It has received directly at least many hundred per cent. in return, while the projectors have made dividends amounting to but little over 2 per cent. per annum, and that in a country where the average rate of interest, from the day the road was commenced to this, has been fully up to 15 per cent. per annum. But one-third of these dividends was earned on the aided lines, the other two-thirds were earned out of property which the directors had created and which was as much their own as if it had been gold mined by them out of the earth.

We have also been providing for the payment of this debt. Our private sinking fund will amount, when it matures, to $22,000,000. We had established a sinking fund to meet the Government debt, but the Thurman act was passed, taking it out of our hands and relieving us entirely from all responsibility in that direction. The Thurman act, although it was unnecessary, expressly authorized these dividends to be made. Senator Thurman himself, in reporting the bill which bears his name, stated that the Committee, in preparing it, "had recognized the fact that it is for the interest not only of the companies, but of the country and of the public, that the stockholders should receive some reasonable dividends, because where roads pay dividends they are always better managed than where they pay none." The most of these dividends were made after the passage of the Thurman act.

But this does not affect the question. Mr. Adams tells you that if these roads ceased for a long period to pay dividends to their stockholders not only will the stockholders lose their interest in the roads, but that the Government interest in them will be jeopardized if not entirely lost.

The Pacific Railroad Commission, the report of which you are now considering, says that no dividends have been unlawfully declared by either the Central or Union Pacific roads; in other words, we had both the moral and legal right to make these dividends. They in nowise jeopardize the interests of the bondholders, either private or public, in these roads. Neither the private creditor nor the Government had any more interest in the rents, issues, or profits of the road, except that the Government had a right to receive, which it did, 5 per cent. of the net earnings and, after the passage of the Thurman act, the percentage provided for in that act. Beyond this the Government had no interest whatever in the rents, issues, and profits of the railroad.

It is hard that so much of your time should be taken up in the presentation of a proposition so plain; but I am here to refute slanders which have almost crystallized into truths. I am placing upon this record the truth of history in vindication of the promoters of this road.

One word more on this point and I leave it forever. The Supreme Court of the United States, in the sinking-fund cases, speaking of the Union Pacific, say that "the right of the stockholders to a division of the earnings of the corporation is a privilege derived from its charter. When the charter and amendments first became laws and the work of the road was first undertaken, it was by no means sure that the enterprise would prove a financial success. No statutory restraint was then put upon the power of declaring dividends;" nor was there any statutory restraint put upon the power of the Central Pacific road to declare dividends, except the one restraint, within which it has always held itself, that the dividends should be declared out of the profits.

## NO PART OF THE FUNDS OF THE CENTRAL PACIFIC ROAD WERE EVER DIVERTED TO AID IN THE CONSTRUCTION OF ANY OTHER RAILROAD.

The Commission undoubtedly came to California in the belief that all the roads constructed by the projectors of the

Pacific roads had been built out of moneys belonging to the Central Pacific road. This was another popular error which the investigation made by the Commission has exploded. The report of their own expert, made in detail and here in evidence, shows that all the branch lines, as well as the Southern Pacific railroad of California, Arizona, and New Mexico, were constructed with the money or upon the credit of the parties who constructed them. They were nearly all built by a construction company, the stockholders of which were substantially the same as the stockholders of each of the roads so constructed. The construction company received for building those roads sometimes part cash, but generally the stock and bonds of the company backed, as those bonds were, by the individual liability of the stockholders.

But never in a single case was the credit or money of the Central Pacific road used in their construction. At times the construction company temporarily borrowed of the Central Pacific road sums of money which were not being used by that company, for which they gave ample security, and all of which were promptly repaid and with interest at the current rates.

It is unnecessary to say anything further under this head, as it will not be assumed, in view of the testimony which has been taken and which is before you, that the charge will ever be made again. The directors of the Central Pacific road, by consolidation, brought into that company the valuable lines of road which connected it with San Francisco. Upon their own individual credit they built and brought into that company the San Joaquin and Sacramento lines, which now constitute the very foundation of the fabric. They secured in its name, but upon their own credit, the terminal lines in Oakland. They secured, as a gift from the State, but in the name of the Central Pacific road, thirty acres of land in Mission Bay, in San Francisco, which will, as time rolls along, be as proportionately valuable for terminal purposes as are the grounds of the New York Central in New York city.

So far from having done one single act to impair the value of the aided line of the Central Pacific road, they have given their credit and directed their power to strengthen and support it, so that it may truly be said now that but for the things which they were not bound to do, and but for the pledges of their individual credit, the aided line of the Central Pacific road would have ceased to be.

### SALARIES AND WAGES.

It was asserted that the directors of the Central Pacific were diverting money from its treasury by paying excessive salaries to its chief officers. Here again investigation dispels a popular error. The salary of President Stanford has only been ten thousand dollars per annum ; the directors, as such, received only five dollars for each meeting; all general officers received salaries in proportion. The truth is that the salaries paid by the company to its principal officers was far less than the salaries paid generally by great railroads to such officers. On the other hand, the wages paid by the Central to its skilled employés are and always have been the highest paid in the country. Since 1885, the date of the lease to the Southern Pacific Company, no salaries whatever have been paid to the president or other principal executive officers. The duties have been performed without compensation.

### RESULTS ARRIVED AT BY THE PACIFIC RAILROAD COMMISSION.

I might spend the day in examining and citing the report of the Commission to prove that upon all material points their decision fully sustained the company. On some immaterial points their opinion was adverse but an examination shows, as in case of the "lost books" and the "Oregon contract," that the Commission misapprehended the facts. Nor is this strange when we consider how broad the field of investigation was and how limited was the time in which that field had to be traversed. Part III of the Report of the Commission is devoted to specific answers to the questions contained in the act of 1887, and these answers are in the nature of a special verdict or finding of fact. This verdict and finding is in favor of the company. Had the issues been tried by a jury and a special verdict been rendered, in the language of the answers of the Commissioners, a judgment for the railroad would necessarily have followed. This report will be widely circulated. It is before you. To pursue it further in detail is not possible in the time which I can take from this committee. To it I call your earnest attention.

### THE EVARTS BILL.

The bill introduced by the Senator from New York is before you. In the main it deals fairly with the matter involved. It guards the rights of both parties. It provides for a judicial determination of all things at issue, to the end that truth may be ascertained and the integrity of the directory be vindicated, if the truth shall constitute such vindication. It is drawn in plain language—language which cannot be misunderstood—and commends itself by reason of its fairness to all just men. But, as I said in the beginning, yours is the duty to look over the wide field and to report a bill which shall as near as possible do exact justice to all parties—which, while it secures all just claims of the United States, will not be oppressive to the company or to the communities from which the road derives its revenues. I have tried to point out that the task is not so difficult as at first glance it might appear; have tried to show that the application of the principles which govern fair-minded people in dealing with each other will speedily bring this controversy to an end, secure all creditors, and leave the company in peace to pursue its avocation—that of a common carrier—and to discharge the obligations imposed upon it as an agency of the nation—the obligation to maintain for all time to come its line of road, to hold it, in peace as in war, to the great governmental uses for which in part it was constructed and to which for a nation's welfare it was dedicated.

## THE COMMISSIONERS' BILLS.

The Pacific Railroad Commissioners have presented two bills, which appear on pages 24 to 35 of their report. (All these references are to the report first published.) The Committee, in considering these bills, must bear in mind the fact that the constitutionality of the entire Thurman bill has never been passed upon by the Supreme Court of the United States; that the late lamented Chief Justice who delivered the opinion of the majority of the Court in that case, *ex industria*, confined that decision to the question whether the United States had the right, under the acts of 1862 and 1864, to increase the percentage which the companies were to pay into the Treasury, provided that increase did not affect the operations of the roads. Neither the Chief Justice nor the Court passed upon the question of the constitutionality of the Thurman act as an entirety; on the contrary, they left that in very grave doubt. Said the learned Chief Justice, in delivering the opinion of the majority of the Court in that case (99 U. S., 718):

> "The single question presented by the case of the Union Pacific Railroad Company is as to the constitutionality of that part of the act of May 7, 1887 (the Thurman act) which established in the Treasury of the United States a sinking fund. The validity of the rest of the act is not necessarily involved."

He further said, delivering the opinion of a majority of the Court—and in this respect there was no dissent on the part of the minority:

> "The United States cannot, more than a State, interfere with private rights, except for legitimate governmental purposes. They are included within the constitutional prohibition which prevents States from passing laws impairing the obligations of contracts. But equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of this railroad. Neither can they by legislation compel that corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created in the grant of lands or in the contract for the subsidy bonds without the consent of the corporation. All this is indisputable."

Thus we have the judgment of the Supreme Court of the United States that the acts of Congress of 1862 and 1864 constitute a contract between the United States and the companies interested—a contract as sacred as contracts between individuals, and which cannot be violated by either party.

The bill which the Pacific Railroad Commissioners present, relating to the Central and Western Pacific Railroad Companies, provides for many changes in that contract. They recognize the fact that the changes cannot be made without the consent of the Central Pacific Railroad Company; but in section 13 they provide that if the company does not accept the provisions of the bill which they present the annual net earnings of the subsidized portions of this railroad shall be paid into the sinking fund created by the Thurman act. In other words, they present to the Central Pacific Railroad Company the alternative of accepting a change in the contract or submitting to a penalty which would, in effect, render the operation and maintenance of its main line an impossibility. The Pacific Railroad Commission do not assume that one party to a contract has the right to change it at its will, but they do assume that the legal power rests in one party to demand of the other that such a change shall be made, and to impose a penalty if the other party does not consent to the change. This proposition is, in my judgment, so monstrous that no court would entertain it for a moment. The contract is to be sacred and inviolate; but one of the contracting parties has the right, according to these Commissioners, to say that if the other does not agree to a change he shall submit to any punishment which the other proposes to inflict. Such a proposition can find no support, either in law or in morals. The right to alter, to amend, or repeal has its limitations. These limitations have been fixed by the Supreme Court, and they must not, either by direction or indirection, destroy or affect the contract entered into.

The Commissioners were, by the act of Congress of April, 1887, charged with the duty of inquiring as to what sums the Pacific railroads and their branches can severally pay annually on account of their indebtedness to the United States without imposing such burdens upon the people, and particularly upon the localities through which the roads pass, as to retard the development of the country.

The Commissioners say substantially (p. 128 of the Report) that the Central Pacific Railroad Company could not agree to the bill which they present without imposing such burdens upon the people and upon the localities which the roads pass as to retard the development of the country.

We have already seen that the act of Congress of 1862, as amended in 1864, looked for the repayment of the Government bonds alone to five per cent. of the net proceeds and to one-half of the compensation for Government transportation, which those acts reserved. It was not thought at that time that any other transcontinental roads would be speedily built. It was believed that all of the transportation of the United States between the East and the West would pass over these lines, and that out of the 5 per cent. of net proceeds and one-half of the Government transportation the bonds of the United States would be met.

Subsequent events made it plain, both to the company and to the United States, that by reason of the unanticipated construction of other lines, the diversion of traffic, and the small allowance which the United States made to the transcontinental companies for the transportation of governmental freight and passengers, the same would not be adequate to meet the Government bonds and interest. We have seen that the Central Pacific Railroad Company for four years in succession presented this view to Congress and asked the concurrence of Congress in establishing a fund which would either meet these bonds at maturity or so reduce the amount that the company could easily handle it. Congress did not listen to these proposals; but the Central Pacific Company established such a fund, and were then met by the Thurman act, which relieved it from all responsibility—an act which its promoters said would be a final settlement, an adjustment between these companies and the Government of all claims of the latter.

This act provided that there should be retained in the Treasury of the United States the whole of the amount charged for Government transportation and enough besides to make up 25 per cent. of the net profits of the railroad companies. It was not then anticipated that so soon other transcontinental lines, subsidized at the expense of the Government, would enter into competition with these lines and divert their traffic and reduce their net profits. It was then still contemplated that the people of the whole United States should bear the burden of repaying the Government bonds with interest; that a sum sufficient to make this repayment would accrue to the railroad companies from a tax levied by them upon the traffic of the whole United States passing over these roads. By reason of the diversion and from the fact that the securities in which this sinking fund was to be invested rapidly appreciated this expectation was disappointed.

The bills presented by the Commissioners provide for refunding the debt of the United States, with its accumulated interest, at the rate of 3 per cent. per annum. They also provide for a sinking fund which shall extinguish not only that debt, but the whole debt of these companies, within a period of fifty years.

They do not stop here, but they provide further that the bills which they present may, if they become laws, be altered, amended, or repealed at the will and pleasure of the United States. It is difficult for a lawyer to conceive of a contract, which he understands to be an agreement between two or more parties for a valuable consideration to do or not to do a certain thing, which shall bind one party and which the other has a right to change at his will or pleasure.

It is claimed that this will be a final settlement of the matter. Not so. When I had looked over the whole field; when I had seen that the Central Pacific Railroad Company had faithfully performed every obligation to the Government of the United States; when I knew that no further obligation would accrue for ten years, I naturally looked about to see why this storm had been raised. In my own mind I entertained the thought, but never expressed it, that the Atchison, Topeka and Santa Fé Railroad Company, the Northern Pacific Railroad Company, the Canadian Pacific Railroad Company, pressed as they were by the competition of these roads, had, in order to destroy the credit and to impair the competitive power of the Central and Union Pacific Railroad Companies, put the air in motion. For these thoughts, never expressed, I owe and now make an apology to the rival companies.

I came here and found placed upon the record, by the president of the Union Pacific Railroad Company and by the directors of that company, some of whom are governmental officers charged with the interests of the Government and with the execution of its laws, the fact that the corridors of this Capitol and the antechambers of Cabinet ministers were swarming with the emissaries of Wall-street wreckers who looked upon the Central and Union Pacific as rich spoils for their masters if their purposes could be carried out. These declarations of the president of the Union Pacific and of Government officers are on the record. We find from them that bills have been introduced into Congress affecting these roads, their interests, and their credit, not for the public good, but to serve the ends of Wall-street manipulators. I do not make these charges; I have no knowledge that they are true; but they stand upon your record undisputed and I must accept them.

Nor do I here impugn the motive of any member of either House of Congress who has introduced or supported any such bills. An eminent commentator said that the greatest difficulty in the way of the law-giver and the law-expounder is the difficulty of ascertaining facts; that however pure and upright the one or the other may be, false conclusions may be reached because the facts have not been presented.

I am here now to say that neither of the bills presented by the Railroad Commissioners will constitute, if passed, a final settlement or adjustment between the Government and these companies.

We have heard a great deal about the value of the lands, of the terminal grounds, and of the lines of these railroads; but the Senator from New York on this Committee most truly said, when these matters were pressed upon his consideration, that a railroad company never sold its road nor its terminal grounds; that the value of a railroad was not computed by estimating the value of the rails and ties, the grounds and depots, but by its earnings. If this be so, then neither the Union nor the Central Pacific Railroad Companies, as corporations, can discharge their financial obligations to the Government or any one else out of assets in hand. These obligations must be discharged out of the earnings, and these earnings come out of the communities through which the roads pass. In the beginning it was thought that such profits would accrue from the transcontinental business and constitute a burden upon the whole nation; but Congress has subsidized other roads, other transcontinental roads have been built by means of such subsidies, and the through business has ceased to be a source of profit. These roads must discharge their obligations, both to the Government and private parties, out of the proceeds of business derived from communities situated at non-competitive points, out of their local business. Any burden which you impose upon either company must, then, be satisfied by such communities, and therefore should be reduced to the minimum.

In the business of railroading no subject is such a source of annoyance and complaint as the discriminations made between competitive and non-competitive points. It is difficult to make the public understand why if a railroad company transports freight from San Francisco to New York at a given rate it cannot transport freight from an intermediate point at the same rate. It is difficult to make the public understand that railroad companies do not at all regulate the price of transportation between competitive points, and that the customer does; that, as between such points, the road must take freight and passengers at a rate far below the average cost of transportation, if that cost be a little above the mere cost of movement.

These problems will never be satisfactorily solved until transportation by rail, by means of improved appliances and cheapened fuel, shall have been reduced to the level in cost of transportation by water.

The effect of the bills presented by the Commissioners will be to impose upon the people of local and non-competitive points a tax which it was originally the purpose of the Pacific railroad acts should be imposed upon the whole Union. This is not just, and no acts of Congress founded upon this theory can long be maintained. The people of the West who live along the lines of these transcontinental lines are not fools. They represent, in part, the highest type of our race. They are quick to look beyond the shadow and seize upon the substance. If Congress should enact the bills which the Commissioners have presented and impose upon them the burdens which it was originally intended that the whole people of the United States should bear, they will be quick to perceive and to clamor against them—Nebraska, Wyoming, Utah, Nevada, and California will soon be in these halls asking for a readjustment of the matter.

Why should the United States charge these communities interest at the rate of 3 per cent. per annum? Why should the United States seek to make a profit out of these communities which have already paid to the Government double minimum prices for the lands upon which they have settled? Interest at the rate of 3 per cent. will not only reimburse the United States, but will bring a profit. The legal-tender notes of the United States not bearing interest pass in the markets of the world at their face value. The obligations of the Government bearing interest at the rate of 2 per cent. per annum would, therefore, be at a premium, and their issuance at the rate of 3 per cent. per annum would bring to the United States a profit, but a profit which must be taken from the local and non-competitive communities along the line of these roads.

This is not the only reason why these bills will not constitute a final adjustment, for within themselves they contain other provisions which leave the question sought to be settled open, and which will bring them before every recurring session of Congress. These bills provide that they may be altered, amended, or repealed at will. The "emissaries of Wall street," about whom Mr. President Adams and his associates, the Government directors, speak, "the defaulting clerks and discharged employés" will still haunt these corridors, equipped with all the power for mischief which now they have.

Whatever is done in advance of the time when these obligations mature should be done with a view to final adjustment and settlement of the matters in dispute. Bills should be so framed in the interest of the people and of these companies that the action of Congress should constitute a finality; that, on the one hand, no undue burden should be imposed upon local communities; that, on the other, no opportunity be afforded to evil-disposed persons to precipitate another struggle to injure or affect the credit of the companies.

While it is true that this Committee has been chosen by one party to the contract, while personally your interests, with but a single exception (Senator Hearst), may be adverse to the interests of the communities from which the railroad companies derive their support, yet that interest is so slight, and I know would affect your judgments so little, that, as the representative of the Central Pacific Railroad Company, I would be willing, if the United States would consent, to constitute you arbitrators to determine all these questions. To you, with but a single exception (Senator Hearst), I am a stranger. To me you are well known. The record of your services is part of the history of my country, and they bring to me and to the people whom I represent an assurance that the duties which have been imposed upon you will be sacredly discharged.

I have trespassed upon your patient kindness for three days. I have done this with the full knowledge that Senators of the United States are overworked; that if you bring to the discharge of your duties all of the abilities which you possess, and the whole of your time, it is impossible that you should give to every subject brought before you that time and attention which it deserves. This country in less than a third of a century has increased in population from thirty to sixty-five millions of people; the thirteenth, fourteenth, and fifteenth amendments to the Constitution have vested in the National Legislature powers which before their adoption had not been exercised. A membership in either body calls for sacrifices of time and means which no other Government but this exacts. The people of America expect and receive much from their representatives, but it is beyond the power of man, in this growing country and impulsive age, to give all that is required.

I have taken much of your valuable time. I appreciate the kindness which actuated you in giving it. I leave behind, in behalf of the people whom I represent, more than has been said. I hope, however, that from the testimony before you the acts of the men who constructed the first transcontinental road and their motives will be fully vindicated.

## THE GRATITUDE OF REPUBLICS.

I know that it has been said that republics are ungrateful, but I believe this is only true when ingratitude is the result of non-action. I am aware that history informs us that Robert Morris, the great financier of the Revolution, died within prison bounds, where he was confined for debt. I aware that De Witt Clinton, out of whose genius the Erie canal grew, who created New York city and made it the commercial emporium of the New World, was permitted to go down to his grave, his motives misapprehended, his great purposes misunderstood. I am aware that Shepherd, who recreated Washington, and who made here the finest capital city which adorns the world, was for a time misunderstood, and virtually a fugitive from the city which he had beautified and adorned. I am aware that the medals, the swords, and other testimonials which General Grant had received from a grateful people were seized by the sheriff and sold under execution, and were only rescued by the generosity of private individuals, to be deposited in the National Museum as a memorial to that man who, while he had his faults, yet rendered eminent and unrecompensed services to his country, and who, by the terms which he granted to Lee and the South at Appomattox, had shone like a god. But these wrongs were all the result of non-action. None of them would ever have resulted from the affirmative action of the American people. With unshaken faith in the people of our race, I am confident that they never will, affirmatively and after deliberation, countenance injustice to any person within the jurisdiction of the nation.

### THE TESTIMONY SUMMED UP.

To sum up, the testimony taken by the Pacific Railroad Commissioners, and which is before you, proves beyond contradiction—

That the projectors of the Central Pacific railroad, as early as 1860, conceived the idea of building a railroad across the most unbroken range of mountains in the Union, and of penetrating the uninhabited territory which lay beyond.

That as early as 1861, under the general laws of the State of California, they associated themselves together for that purpose, combining their wealth, small though it may have been compared with the fortunes of this day, and venturing all in the undertaking.

That they expected to cross the mountains, reach the interior of the country, develop its resources, and out of its fruits push that road on until it should reach civilization advancing from the East.

That in 1862 Congress passed an act—a war measure—looking to the construction of a transcontinental road which should bind together the East and the West.

That the projectors of the Central Pacific railroad were compelled to accept that act or abandon their undertaking and lose the sums already expended in explorations and surveys.

That the people of the United States had so little confidence in the enterprise that, though the Union Pacific had in the main but to rear a superstructure upon a road-bed graded by nature, no one could be found to undertake the responsibility.

That the Central Pacific Company under this act pushed forward the first road which was ever intended to reach beyond the confines of civilization.

That in 1864, in the presence of war, and as a measure looking to the preservation of the Union, Congress offered additional inducements, which the Union Pacific accepted.

That without this act it is clear that the Central Pacific Company would have slowly built a road and in the end reached to the Missouri river, would now have been free from debt, and the wealthiest corporation in this country.

That the Union Pacific commenced work upon the level plains of the Platte, while the Central was struggling in the mountains.

That it became a necessity for the latter company, by reason of these acts of Congress and the aid granted to the Union Pacific, to sacrifice everything to speed in order to obtain mileage sufficient so that the operation of their end of the road would compensate them for service on it, or to submit to a total loss.

That the result was that both roads were completed seven years before the time fixed by the act of Congress, and that by reason of this completion the Government realized in golden dollars more money than all the aid furnished by it to both lines.

That the Government contracted with the Central Pacific Railroad Company that as soon as its line was marked upon the ground it would cause the lands to be surveyed upon either side, so that the aid in lands should be available for the construction of the road.

That the Government has not to this day caused that survey to be made, nor has it complied with its obligations relating to the lands which it had promised to that company.

That the Government contracted that as each section of the road was completed it would then issue to the Central Pacific railroad the bonds which were granted in aid of that section.

That it never in a single instance complied with this obligation, but always delayed the issue of the bonds, subjecting the company to loss in interest paid by reason of this default in a sum exceeding $400,000.

That the Government virtually promised to give to this company the transportation of its troops, munitions of war, supplies, and mails at a reasonable compensation. It has neither given the promised transportation, nor has it paid just compensation for services rendered. It has diverted the transportation from the lines of the aided roads to rival and competing roads of Government supplies, and has paid higher rates for the service.

That the Government contracted that it would pay this company a reasonable compensaion for carrying the mails. It has denied a reasonable compensation, and has refused in many instances to pay even the small compensation allowed.

That the Government has refused to pay to this company moneys earned and due, the justice of which had been affirmed by the solemn judgment of the Supreme Court.

That the Commissioners report this a breach of faith which the Government should promptly repair.

That the Central Pacific Railroad Company has in all cases, from the date of its organization down to the present time, complied with its obligations to the United States, and that this is shown, not only by the testimony before the Commission and by the report of the Commission itself, but by the declaration of Mr. Anderson, made in answer to a question by myself in the presence of this Committee.

That the bonds issued to it by the United States were payable in legal-tender notes, and were necessarily discounted at about 30 per cent.; that the bonds were issued to it at par, and were the only bonds ever issued by the Government during or immediately after the war upon which the Government did not bear the loss.

That the Central Pacific railroad cost many millions more than the net proceeds of the first-mortgage and Government bonds.

That there never has been any misapplication or diversion of its funds.

That its directory has at all times been faithful to its interests.

That but for roads and other property acquired by the directors upon their own credit and brought into the system the aided line would have been to-day of little, if any, value.

That it has kept fully paid the interest on its first-mortgage bonds, and has established a sinking fund which at maturity will pay off $22,000,000 of such bonds.

That it repeatedly asked Congress to join it in establishing a sinking fund for the payment of the Government debt, but Congress neglected.

That on its own motion it did establish a sinking fund which, had it not been for the Thurman bill, would have discharged at maturity the whole of the interest on the Government bonds and the major part, if not the whole, of the principal.

That the Thurman bill, passed against its protest, relieved the company of all responsibility on account of such sinking fund, and by forcibly taking its moneys deprived it of all power in that respect.

That the Thurman bill not only relieved the company of all responsibility as to a sinking fund, but postponed the payment of the principal and interest of the Government debt until the fund provided for in such act would be sufficient to pay such debt.

That the Thurman act was declared by its promoters to be, and was, in fact, a final settlement between the parties, and can only be, in the respect in which it constitutes a contract, changed by consent of both parties.

That large sums are justly due and unpaid from the Government to this company. This appears from the report of the Commissioners and from the opinions of the Supreme Court.

That the company has equitable claims against the Government growing out of the failure on the part of the Government to perform its contracts, which claims will go largely towards discharging the claim of the United States on account of the subsidy bonds.

That the United States has never lost a dollar from any act of this company, but has been benefited in millions.

That the United States can sustain no loss unless by reason of its own ill-advised action.

All these things and more are proved by the testimony now before this Committee.

### SETTLEMENT

In the presence of these considerations I ought not to be asked what settlement the Central Pacific is willing to make relating to obligations which do not accrue for ten years to come. To the honest mind the conclusion would instantly come that before the United States asks for more it should perform what it has promised in the past.

### A DIVORCE.

It is said by the Commissioners, and reiterated by the President, that the Pacific railroad should be divorced from the Government. Living upon the confines of civilization, as I have for nearly a quarter of a century, I have frequently seen husband and wife freed, so far as the law is concerned, from the bonds which held them together. I have seen husband and wife united when the wife was the stronger;

when she brought the wealth of woman's love and the support which alone that can give. I have seen the spouses go through life, the wife devoted to domestic affairs, the husband mixing with the world, until the man, educated by contact with superior minds and superior intelligences, advanced, while the woman, devoted to household and wifely duties, lagged behind. I have seen the time come when the man, by reason of these facts, desired a separation; but never, in all my experience, have I known a man so low, so base, that when it came to the moment of separation he desired to take from her who had stood by him when she was strong and he was weak, the home in which their children were born, or to strip her of the good name and honor which her virtues deserved.

We were wedded to the United States in the hour of darkness and peril—the hour of darkness and peril not only to the nation but to the world. We were then stronger in credit than our spouse. The United States wanted a road constructed for military purposes across the mountains upon which the storm king sat enthroned, across desert wastes into whose depths none but the bravest might enter. The United States wanted that road constructed for its then purposes, and wanted it maintained for all time to come for its use in peace and in war. We did it faithfully and honestly, and all the obligations of that marriage contract on our part have been performed as truly as the proudest woman of our race ever kept the obligations which she owed to her husband. We not only gave the United States one military road across this continent, but as the result of our labors to-day another road equally as advantageous skirts the northern frontier, another sweeps the length and breadth of the western, and still another on the southern frontier has become the picket line of the Republic.

It may be that the United States, which has performed none of its obligations towards us, has grown tired of the alliance. It may be that the time has come when, in defiance of the laws which bound us together, the bonds are to be broken. If such a time has come let me assure you, and through you the people of this country, that no consent of ours shall tarnish the honor and reputation which we gained while that alliance existed.

## THE MEN WHO HAVE BUILT SO MANY RAILROADS.

Good character and reputation make up the best property which can be held. They oftentimes constitute the only defense a man can make when assailed. The law recognizes that good character when thrown into the scale in the administration of justice is often potent enough to overcome the strongest circumstantial evidence and to establish innocence when the beam would otherwise incline toward guilt. At least, under all circumstances and at all times, a well-spent life arms the man with a shield which justly protects him from the shafts which envy or malice may speed.

Six men—three living and three of whom have passed away—were the fathers of the Central Pacific railroad. Leland Stanford was its first president and ever since has held that position. When the artist of the future shall upon canvas delineate that group Leland Stanford, by reason of his position, must be the central figure. All were equal in manhood, courage, and indomitable will. Each performed the part allotted to him more than well. The honors can never be divided; they belong to all alike. Let us inquire who these men are?

Leland Stanford was born in the Mohawk Valley, the son of a father who at an early day had engaged in railroad enterprises. With the spirit which animates our race, he left at an early day his home, sought the then great West (Wisconsin), and embarked in the practice of law, for which he had fitted himself. Rising to distinction in the community in which he lived, sharing in a lucrative practice, happily married, he might, but for the discovery of gold in California, have to-day been the first citizen of the State in which he had made his early home. The fabulous stories of the new El Dorado lured him to the Pacific shores.

He went to California before many courts were organized, at a time when the rude justice of the mining communities supplied the place of established jurisprudence. He lived awhile honored, respected, in his mountain home in California. He did not follow his profession because courts were not open and justice was summarily administered. He afterwards embarked in mercantile ventures, and in mining acquired what, at that day, was a great fortune. He was the first Republican Governor of California, elected to that position in the fall of 1861.

That State, settled by citizens of the North and South, was about equally divided in sentiment on the question of union and disunion. For a long time it trembled in the balance. He came to the administration of the Government in that State in the hour of its most deadly peril. Civil war as known upon the borders between the North and the South was as child's play compared with what it would have been had strife broken out in that State. Almost every man within its limits not only carried arms but was familiar with their use. Feeling ran high. Men divided, giving, in the main, their allegiance to the section in which they were born. One ill-advised act on the part of the executive would have precipitated a strife which would have depopulated the State—left its cities and towns in ruins. With even hand, with a conscience which could recognize the fact that blood was thicker than water, which could recognize the fact that the sons of the South might stand upon the one side and the sons of the North upon the other, and each believe they were in the right, with a conscience which could appreciate the fact that to err was human, and that harsh judgments were not Christian, he held the scales in equipoise. While, on the one side, his State poured into the coffers of the Union the treasures of its mountains and its generous people gave to the sanitary fund more money than all the Union beside, and while on the other nearly half of its population were bound in the holiest ties to the people of the South, yet his action was such that during the term of his office there was not within the limits of the State a single disturbance based upon these mighty and honest differences of opinion.

When the hour came in which, at his own choice, he was to retire from office, the Legislature, then is session, divided in its allegiance, did an act unparalleled during the course of the Civil War. By a unanimous vote of both houses it returned to this now assailed man the thanks of a grateful people for the manner in which he had administered his office. He retired from the political field to enter with his associates upon the great undertaking which has resulted in so much good to the Union and to civilization. He bent the energies of his mind to that, and against all obstacles he and his associates, to their everlasting credit, carried the work through.

When the Central Pacific railroad was completed it was about all there was of the State of California. It is only natural that its projectors and owners should for a time have filled an important place in public estimation. The anti-railroad feeling which swept over the Central West—I must so distinguish it from the Pacific coast—naturally reached California. He and his associates bore the brunt of it. Many a man who then misapprehended their motives and their acts and joined in the crusade has since admitted the mistake and striven to redress his wrong.

With his associates he aided in the development of that State until it now promises to be one of the first in the Union. Its gold mines have been in a measure closed, but its fertile fields are developing a wealth greater than its fondest son ever considered possible. The work of himself and his associates was not unappreciated there, although they were assailed for a time; but in the very midst of that assault the sober second sense of that people came to the surface, and with an accord never before known in any State they demanded, without regard to party, that the Legislature should make Leland Stanford one of their representatives at the national capital.

The first man in California, to my knowledge, who proposed this was the Senator who sits as one of this committee, and who, with his associate, so truly and well represents that growing Commonwealth. The first newspaper was a Stockton paper, an organ of the Democratic party and conducted by one of its best minds. No sooner had the proposition been made than it spread like wild-fire through the State, and nothing would satisfy the people until he was chosen and reluctantly accepted the most exalted position—a position the free offering of that brave people.

Bereft by death of the son and support of his household, with age coming on him, richly did he repay the favors which his adopted State and its citizens had showered upon him. Possessed, as he was, of immense tracts of land lying in the fertile valley of the Sacramento, of others at Palo Alta, south of San Francisco; of bonds and stocks, horses and cattle; of life and energy for the future, with one stroke of the pen, after making an allowance which a decent respect for the opinion of mankind required him to make for his immediate relatives and friends, he gave all he had—all he might hereafter acquire—his property, his marvelous executive ability, to the foundation and endowment of a university on the peninsula of San Francisco.

The declared purposes of that university—endowed as no one had ever before been—was to "promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating a love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty, and the pursuit of happiness."

It is reported that Mr. Littler, one of the Commissioners, when he returned from California, said to a reporter of a Chicago paper that they (the Commissioners) were treated with contempt in California; that Governor Stanford seemed to own the whole State. Mr. Littler, perhaps, knew not the tribute, however just it might have been, which he was paying to this man, for while Mr. Stanford now owns nothing of material value in that State or elsewhere he is rich in the priceless possession of the hearts of its noble and generous people.

Three of his associates in this great work have passed beyond the River of Death. They were brave men in their ways. Monuments reared in gratitude mark their resting places, and in the memory of the people they are cherished as the highest types of the all-powerful race to which they belonged.

Mr. Charles Crocker is one of the living associates, the one who for three years risked his life in the storms of the Sierras. He commanded in person the army which was combating nature itself, and with calm fortitude and an exalted courage faced danger as great as the dauntless Pickett met on the heights of Gettysburg. He still lives, a gray-haired man, honored and respected by all who know him. It has been my fortune to be most intimate with him, to bear toward him relations as sacred as the physician or confessor bears to the patient or the dying, to advise him in his daily affairs, to draft the provision of the will which shall make the disposition of his property when he had ceased to be. In a life, now nearly ended, spent from boyhood on the frontier, brought in contact with men in every aspect, I can and will bear testimony to the fact that in the whole of that life I have never met a man whose sense of justice and of right was more exact than that of Charles Crocker. Human he is, quick and impetuous, often wrong, perhaps, but never consciously offending. His charities have been silent, but thousands of homes in his adopted State bear loving testimony that the fortune which came to him and to his rested in worthy hands.

Of Mr. C. P. Huntington, the other living associate, it has been my lot to know less. In the early days of California he was a merchant. He still is a partner in the commercial houses which yet in Sacramento and San Francisco bear in part his name—houses which for more than a third of a century have stood the embodiment of commercial credit and faith. He has lived for more than twenty years in the city of New York, handled the financial affairs of the company there, and been engaged in many other enterprises. Knowing less of him personally than I do of his associates, for I lived upon the Pacific coast and he upon the Atlantic, I can assert, however, from the history of the times, that no obligation of his has ever been unperformed, no promise made has ever been broken. When, a few years ago, a panic reached Wall street, he was the oldest man there. His reputation was such that he was able to throw himself in the breach and almost single-handed avert a crisis which otherwise would have engulfed almost every business concern in the United States and brought disaster widespread.

Surrounding and supporting these men are the general manager, the engineers, superintendents, heads of departments, agents, and others engaged in the vast business which they carry on—men of whom I may justly say (excepting only the head of the law department) their names in my adopted State are the synonyms of honesty and integrity.

Thus briefly I have glanced at the lives of these men. I could if it were needed, but it is not, throw their reputation and standing for many long and eventful years in the scale. To that reputation without fear could I appeal. Integrity is the shield which, though it may be battered for a time, can never be broken, and at last always constitutes a defense against unjust and unwarrantable assaults.

These men are not here, nor am I here as their representative, to ask for any settlement or adjustment. They have kept all their contracts, public and private. They have performed their obligations towards this Government. They owe it nothing which is now due. No man dares to say that when the time comes they will not, as they have in the past, perform all obligations. I am authorized by them to say that if the Government of the United States were to submit a blank sheet of paper upon which to write the terms of a purely moneyed settlement and adjustment they would reject the offer. They cannot afford to tarnish their reputations and dishonor the names of their dead associates. Although they are under no obligations whatever to this Government—although ten years must elapse before they can come under any obligations—they are willing now to fairly meet every question which has been presented. They are willing to waive all statutes of limitations. They are willing not only to account to the Government and to every one else, not only as trustees, but under the responsibilities of a guardian, for every act they have done. They are willing to waive the time to run upon their obligations to the Government and meet that Government in any of its courts or before any just tribunal which it may select. Will the Government do as much? That is one of the questions for you to answer.

I have shown you, upon the authority of Mr. Adams, why this storm has been set in motion. It is time its violence was stayed. There was no cause for it in the beginning. It will find no justification in the end.

I am willing, if you will accept the trust, to leave all of these issues in your hands. If you are unwilling to accept the trust and take upon yourselves the responsibility and labor, then you can do no less than to refer the question to the established courts of the country, to be dealt with according to the laws of the land.

It is no answer to this proposition to say that these slanders have been set in motion by irresponsible men, and have been promoted by members of the lobby who, Mr. Adams says, throng the corridors of the Capitol. They have gone forth to the world. Their ignoble authorship, however, has been concealed. It is just to the projectors of the Pacific railroad—it is just to the truth of history—that these matters should be subjected to a judicial investigation.

In closing, in their name and in the name of justice and right, I with confidence ask of you that this be done. I have an abiding faith, growing out of the past record of each member of this Committee, that neither could be unjust to himself, and it "follows as the night the day" that neither can be unjust to others. Now, thanking you kindly for the hours which you have taken from other affairs which press so heavily upon your time, upon the record I submit to you the case of the company which I have here represented in the full belief that you will in justice deal with it, and render a judgment which your consciences will forever approve.